
STATUTORY INSTRUMENTS

2016 No. 987

The Brechfa Forest Wind Farm Connection Order 2016

PART 1

Preliminary

Citation and commencement

1. This order may be cited as the Brechfa Forest Wind Farm Connection Order 2016 and comes into force on 28th October 2016.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1980 Act” means the Highways Act 1980(3);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);

“the 1984 Act” means the Road Traffic Regulation Act 1984(5);

“the 1989 Act” means the Electricity Act 1989(6);

“the 1990 Act” means the Town and Country Planning Act 1990(7);

“the 1991 Act” means the New Roads and Street Works Act 1991(8);

“the 2008 Act” means the Planning Act 2008;

“access and rights of way plans” means the plans listed in Part 3 of Schedule 2 (plans) and certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;

“archaeological written scheme of investigation” means the archaeological written scheme of investigation certified as the archaeological written scheme investigation by the Secretary of State for the purposes of this Order;

“authorised development” means the development described in Schedule 1 (authorised development), and any other development authorised by this Order, which is development within the meaning of section 32 of the 2008 Act;

(1) 1961 c. 33.
(2) 1965 c. 56.
(3) 1980 c. 66.
(4) 1981 c. 66.
(5) 1984 c.27
(6) 1989 c.29
(7) 1990 c. 8.
(8) 1991 c. 22.

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

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

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971(9);

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

“CEMP” means the Construction Environmental Management Plan (Document 8.6A) together with the waste management plan, the pollution prevention and emergency response plan, water management plan, the dust management plan, invasive weeds management plan, certified as the CEMP by the Secretary of State for the purposes of this Order;

“CMS” means the Construction Management Strategy (Document 8.5) certified as the CMS by the Secretary of State for the purposes of this Order;

“crown land plans” means the plans listed in Part 4 of Schedule 2 (plans) and certified as the crown land plans by the Secretary of State for the purposes of this Order;

“CTMP” means the Construction Traffic Management Plan (Document 8.7) together with the Public Rights of Way Management Strategy (Document 8.7 Annex 1), certified as the CTMP by the Secretary of State for the purposes of this Order;

“design drawings” means the design drawings listed in Part 5 of Schedule 2 (plans) and certified as the design drawings by the Secretary of State for the purposes of this Order;

“dust management plan” means the dust management plan forming Document 8.6 Annex 5 of the CEMP and certified as the dust management plan by the Secretary of State for the purposes of this Order;

“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 features plans” means the plans listed in Part 6 of Schedule 2 (plans) and certified as the environmental features plans by the Secretary of State for the purposes of this Order;

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

“flood consequence assessment” means the flood consequence assessment certified as the flood consequence assessment by the Secretary of State for the purposes of this Order

“frac-out contingency plan” means the frac-out contingency plan certified as the frac-out contingency plan by the Secretary of State for the purposes of this Order;

“habitat management plan” means the habitat management plan (Document 8.6.1) and certified as the habitat management plan by the Secretary of State for the purposes of this Order;

“heritage designation plans” means the plans listed in Part 7 of Schedule 2 (plans) and certified as the heritage designation plans by the Secretary of State for the purposes of this Order;

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

“invasive weeds management plan” means the invasive weeds management plan forming Document 8.6 Annex 6 of the CEMP and certified as the invasive weeds management plan by the Secretary of State for the purposes of this Order;

“land plans” means the plans listed in Part 8 of Schedule 2 (plans) and certified as the land plans by the Secretary of State for the purposes of this Order;

“limits of deviation” means the limits of deviation referred to in article 5 (limits of deviation) and shown on the works plans;

“maintain” means to inspect, repair, adjust, alter, remove, reconstruct, replace, reconductor or relay the authorised development, but not so as to vary from the description of the authorised development in Schedule 1 and provided such works do not give rise to any materially new or materially different environmental effects to those identified in the environmental statement and any derivative of “maintain” is to be construed accordingly;

“master key plan” means the master key plan listed in Part 2 of Schedule 2 (plans) and certified as the master key plan by the Secretary of State for the purposes of this order;

“Natural Resources Wales” means the Natural Resources Body for Wales;

“operational use” occurs when that part of the authorised development first transmits electricity at 132kV;

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

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

“overall location plan” means the plan listed in Part 1 of Schedule 2 (plans) and certified as the overall location plan by the Secretary of State for the purposes of this Order;

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

“pollution prevention and emergency response plan” means the pollution prevention and emergency response plan forming Document 8.6 Annex 2 of the CEMP and certified as the pollution prevention and emergency response plan by the Secretary of State for the purposes of this Order;

“public rights of way management strategy” means the public rights of way management strategy forming Document 8.7 Annex 1 of the CTMP and certified as the public rights of way management strategy by the Secretary of State for the purposes of this Order;

“relevant highway authority” means the highway authority for the highway that the provision relates, being either the South Wales Trunk Road Agency or Carmarthenshire County Council as appropriate;

“relevant planning authority” means the planning authority for the area of land that the provision relates to, being Carmarthenshire County Council;

“the Requirements” means the requirements in Schedule 3 (Requirements);

“statutory undertaker” (except in Part 1 of Schedule 9) means any person falling within section 127(8) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

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

“trees and hedges with the potential to be affected plans” means the plans listed in Part 9 of Schedule 2 (plans) and certified as the trees and hedges with the potential to be affected plans by the Secretary of State for the purposes of this Order;

“undertaker” means Western Power Distribution (South Wales) Plc (Company Number 2366985) whose registered office is at Avonbank Feeder Road Bristol BS2 0TB or any other

⁽¹⁰⁾ 1981 c. 67.

person who has the benefit of this Order in accordance with article 6 (benefit of Order) or 7 (consent to transfer benefit of Order);

“waste management plan” means the waste management plan forming Document 8.6 Annex 1 of the CEMP and certified as the waste management plan by the Secretary of State for the purposes of this Order;

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

“water management plan” means the water management plan forming Document 8.6 Annex 3 of the CEMP and certified as the water management plan by the Secretary of State for the purposes of this Order; and

“works plans” means the plans listed in Part 10 of Schedule 2 (plans) and certified as the works plans by the Secretary of State for the purposes of this Order. References

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the restrictions over the land which are made pursuant to this Order.

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

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

(5) References in this Order to points identified by letters, or numbers are to be construed as references to points so lettered or numbered on the access and rights of way plans.

PART 2

Principal powers

Development consent granted by the Order

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

(2) The undertaker may install, and keep installed, the above ground electric lines and the underground cables included in the authorised development.

(3) The undertaker may use the electric line and any other elements of the authorised development as part of the electricity distribution system in Wales.

(4) Subject to article 5 (limits of deviation), the authorised development must be constructed and installed in the lines and situations shown on the works plans and in accordance with the levels shown on the design drawings.

Maintenance of the authorised development

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

Limits of deviation

5. In carrying out or maintaining the authorised development for which it is granted development consent by article 3(1) (development consent granted by the Order), the undertaker may—

- (a) deviate laterally from the lines or situations of the authorised development shown on the works plans within the limits of deviation relating to that work as described in Requirements 3(1) and 3(2) and carry out construction activities for the purposes of the authorised development anywhere within the Order limits; and
- (b) deviate vertically from the levels of the authorised development set out in Table 1 of Requirement 3:
 - (i) to any extent not exceeding 2 metres upwards; or
 - (ii) to any extent downwards as may be necessary or convenient.

Benefit of Order

6.—(1) Subject to article 7 (consent to transfer benefit of Order) and the remaining provisions of this article, the provisions of this Order are to have effect solely for the benefit of the undertaker.

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

Consent to transfer benefit of Order

7.—(1) The undertaker may, with the consent of the Secretary of State—

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

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

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

PART 3

Streets

Application of the New Roads and Street Works Act 1991

8.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 of the 1991 Act (street works in England and Wales) as major highway works if they are of a description mentioned in paragraphs (f) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made, or code of practice issued or approved, under those provisions are to apply (with the necessary modifications) in relation to any closure, alteration or diversion of a street of a temporary nature by the undertaker under the powers conferred by article 12 (temporary closure of streets and public

rights of way) and the carrying out of street works under article 10 (street works) whether or not the works, closure, alteration or diversion constitutes street works within the meaning of that Act.

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

- (a) section 54 (advance notice of certain works), subject to paragraph (4);
- (b) section 55 (notice of starting date of works), subject to paragraph (4);
- (c) section 56 (directions as to timing of street works);
- (d) section 57 (notice of emergency works);
- (e) section 59 (general duty of street authority to co-ordinate works);
- (f) section 60 (general duty of undertakers to co-operate);
- (g) section 65 (safety measures);
- (h) section 67 (qualifications of supervisors and operatives);
- (i) section 68 (facilities to be afforded to street authority);
- (j) section 69 (works likely to affect other apparatus in the street);
- (k) section 70 (duty of undertaking to reinstate);
- (l) section 71 (materials, workmanship and standard of reinstatement);
- (m) section 72 (powers of street authority in relation to reinstatement);
- (n) section 73 (reinstatement affected by subsequent works);
- (o) section 75 (inspection fees);
- (p) section 76 (liability for cost of temporary traffic regulation);
- (q) section 77 (liability for cost of use of alternative route); and
- (r) all such other provisions as apply for the purposes of the provisions mentioned above.

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

Street works

9.—(1) The undertaker may, for the purposes of the authorised development, enter upon so much of any of the streets specified in Schedule 6 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in or over the street;
- (d) maintain apparatus in or over the street or change its position;
- (e) place and keep during the construction and installation of the authorised development scaffolding above the street or on any verge to a street;
- (f) strengthen, improve, repair or reconstruct any street;
- (g) remove or use all earth and materials in or under any street; and
- (h) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d), (e), (f) and (g).

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

(3) The powers conferred in paragraphs (1) and (2) are without prejudice to the powers of the undertaker under the 1989 Act.

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

Construction and maintenance of new or altered means of access

10.—(1) Those parts of each means of access specified in Schedule 5 (parts of access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the relevant highway authority and must be maintained by and at the expense of the undertaker for a period of 12 months from completion and from the expiry of that period by and at the expense of the relevant highway authority.

(2) Those parts of each means of access specified in Schedule 5 (parts of access to be maintained at the public expense) to be constructed under this Order must be completed to the reasonable satisfaction of the relevant street authority and must be maintained by and at the expense of the undertaker for a period of 12 months from the date on which the undertaker no longer requires use of the access for the construction of the authorised development and from the expiry of that period by and at the expense of the relevant street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it 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 to traffic.

(4) For the purposes of a defence under paragraph (3), a court is, in particular, to 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 had 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.

Temporary closure of streets and public rights of way

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

- (a) divert the traffic from the street or public right of way; and
- (b) subject to paragraph (3), prevent all persons from passing along the street or public right of way.

(2) Without prejudice to paragraph (1), the undertaker may use any street or public right of way closed under the powers conferred by this article within the Order limits as a temporary working site.

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

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, alter or divert the streets and public rights of way specified in column (2) of Schedule 7 (streets/ rights of way to be temporarily closed, altered or diverted) to the extent specified, by reference to the letters and numbers shown on the access and rights of way plans, in column (4) of that Schedule.

(5) The undertaker must not temporarily close, alter or divert—

(a) any street or public right of way specified as mentioned in paragraph (4) without first consulting the street authority; and

(b) any other street or public right of way without the consent of the street authority which may attach reasonable conditions to any consent, but such consent is not to be unreasonably withheld.

(6) If a street authority fails to notify the undertaker of its decision within 42 days of receiving an application for consent under paragraph (5)(b) that street authority is to be deemed to have granted consent.

Traffic regulation

12.—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of or in connection with construction of the authorised development, at any time prior to when the authorised development first becomes operational—

(a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road;

(b) authorise the use as a parking place of any road; and

(c) make provision as to the direction or priority of vehicular traffic on any road either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers of article 12 in respect of prohibitions or restrictions relating to vehicular traffic only and paragraph (1) of this article unless it has—

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

(b) advertised its intention in such manner as the traffic authority may specify in writing within 7 days of its receipt of notice of the undertaker's intention in the case of subparagraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 13 or paragraph (1) of this article—

(a) has effect as if duly made by, as the case may be—

(i) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or

(ii) the local authority in whose area the road is situated as an order under section 32 of the 1984 Act,

(b) and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(11) (road traffic contraventions subject to civil enforcement).

(4) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(5) If the traffic authority fails to notify the undertaker of its decision within 56 days of receiving an application for consent under paragraph (1) the traffic authority is deemed to have granted consent.

Access to works

13.—(1) The undertaker may, for the purposes of carrying out, construction or maintenance of the authorised development and with the consent of the relevant planning authority, after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If the relevant planning authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision within 42 days of receiving an application, the planning authority is to be deemed to have granted approval.

Agreements with street authorities

14.—(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 temporary closure, alteration or diversion of a street authorised by this Order; or
- (c) the carrying out in the street of any of the works referred to in article 9 (street works) or article 13 (access to works).

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

- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and the street authority specifying a reasonable time for the completion of the works; and
- (c) contain such terms as to payment and otherwise as the parties consider appropriate.

PART 4

Supplemental powers

Discharge of water

15.—(1) Provided that consent has been obtained from the relevant person pursuant to paragraph (3) the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised development and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 of the Water Industry Act 1991(12) (right to communicate with public sewers).

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

(4) The undertaker must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval is not to be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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

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

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12 (1) (b) of the Environmental Permitting (England and Wales) Regulations 2010(13).

(8) 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 that person is deemed to have granted consent or given approval, as the case may be.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Natural Resources Wales, an internal drainage board, a local authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(14) have the same meaning as in that act.

Defence to proceedings in respect of statutory nuisance

16.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(15) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order is to be made and no fine may be imposed under section 82(2) of that Act if—

(a) the defendant shows that the nuisance—

- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the carrying out of the authorised development in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site), of the Control of Pollution Act 1974(16); or

(12) 1991 c.56. Section 106 was amended by the Water Act 2003 (c.37), sections 36(2) and 99.

(13) S.I. 2010/675.

(14) 1991 c.57.

(15) 1990 c. 43.

(16) 1974 c. 40. Section 61(9) amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to this Act which are not relevant to this Order.

- (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot be reasonably avoided.

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

Authority to survey and investigate the land

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

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

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

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

- (a) must, if so required before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent is not to be unreasonably withheld.

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

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

that authority is to be deemed to have granted consent.

(7) Unless the undertaker has taken temporary possession of the land pursuant to article 28 (temporary use of land by the undertaker), the undertaker shall (unless required by the owners of the land not to do so) remove all vehicles and equipment from and restore the land to the

reasonable satisfaction of the owners as soon as reasonably practicable after completion of the survey, monitoring or investigation (as the case may be).

PART 5

Powers of acquisition

Application and modification of legislative provisions

18. Subject to the modifications set out in Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction, as they apply to the compulsory purchase of land and interests in land.

Compulsory acquisition of rights in, under or over land

19.—(1) The undertaker may acquire compulsorily rights in, under or over so much of the Order land described in the book of reference, as is required for the construction, use and maintenance of the authorised development or is incidental to it or required to facilitate it.

(2) The acquisition of rights in, under or over the land in this article 19 shall include the compulsory acquisition of a right in, under or over land by creation of a new right.

(3) The undertaker may impose the restrictions, in, under or over the Order land described in the book of reference, as well as by acquiring the rights and the benefits of restrictions already in existence.

(4) This article is subject to article 27 (temporary use of land by the undertaker).

(5) Subject to section 8 of the 1965 Act (provisions as to divided land) as substituted by paragraph 5 of Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right in, under or over land under this article or imposes a restriction under paragraph (3) the undertaker is not required to acquire a greater interest in that land.

(6) In any case where the acquisition of rights under this article or the imposition of a restriction under paragraph (3) 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 or impose such restrictions to the statutory undertaker in question.

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

(8) No interest in Crown land may be acquired pursuant to this Order unless the appropriate Crown authority consents to such acquisition.

Statutory authority to override easements and other rights

20.—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), 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 use of land arising by virtue of contract.

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

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

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

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

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

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

Compulsory acquisition of land – incorporation of the mineral code

21. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(17) (minerals) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” there is substituted “the undertaker”.

Time limit for exercise of authority to acquire rights in land compulsorily

22.—(1) After the end of the period of 5 years beginning on the day on which the Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the 1981 Act as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 27 (temporary use of land by the undertaker) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Suspension of private rights

23.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition of rights or the imposition of restrictions under the Order shall be suspended as is necessary to ensure the operation of this Order and in so far as their continuance would be inconsistent with the exercise of the right acquired or the burden of the restriction imposed—

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

whichever is the earliest.

(2) 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 for as long as the undertaker remains in lawful possession of the land.

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

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

(5) Paragraphs (1) and (3) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
- (ii) the undertaker's appropriation of it;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it,

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

(b) any agreement made, in so far as it relates to the authorised development, at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested, belongs or benefits.

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

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

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

(7) Reference in this article to private rights and restrictive covenants over land includes any trust, incident, easement, wayleave, 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 having that effect.

Extinguishment of private rights and restrictive covenants relating to Western Power Distribution (South Wales) Plc's apparatus removed from land subject to temporary possession

24.—(1) This article applies to any Order land specified in Schedule 8 (land of which temporary possession may be taken) of which the undertaker takes temporary possession under article 27 (temporary use of land by the undertaker).

(2) All private rights vested in Western Power Distribution (South Wales) Plc or restrictive covenants the benefit of which are vested in Western Power Distribution (South Wales) Plc in relation to apparatus removed from any land to which this article applies pursuant to Schedule 1 (authorised development) are extinguished from the date on which the undertaker gives up temporary possession of that land.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

(3) In section 3 (preliminary notices) for subsection (1) there is substituted—

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

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”

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

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

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

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

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

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

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

(8) References to the 1965 Act in the 1981 Act are construed as references to the 1965 Act as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions) to the compulsory acquisition of rights in land under this Order.

Rights under or over streets

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

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

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

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

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

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

Temporary use of land by the undertaker

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

(a) enter on and take temporary possession of—

(i) so much of the land specified in column (1) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and

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

(b) remove any electric line, electrical plant, structures, apparatus and vegetation from that land;

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

(d) construct any works specified in relation to that land in column (2) of Schedule 8, or any other mitigation works.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land referred to in paragraph 1(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 8, 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 completion of the work for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) The undertaker must provide the owner of any land of which temporary possession has been taken under paragraph (3) with written notice of the date of completion of the work for which temporary possession was taken within 28 days of the completion of those works.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land but the undertaker shall not be required to replace a building removed under this article.

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

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

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) 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 interest in it.

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

(11) Nothing in this article prevents the undertaker from taking temporary possession more than once in relation to any land specified in Schedule 8.

Temporary use of land for maintaining the authorised development

28.—(1) At any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
- (b) construct such temporary works (including the provision of means of access) or structures on the land as may be reasonably necessary for that purpose; and
- (c) enter on any land within the Order limits for the purpose of gaining access as is reasonably required for the purpose of maintaining the authorised development.

(2) Not less than 28 days before entering upon 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.

(3) 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.

(4) 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.

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

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

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) 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 (5).

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

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

(10) In this article “the maintenance period”, in relation to any part of the authorised development means the period of five years beginning with the date on which that part of the authorised development is brought into operational use.

Statutory undertakers

29. Schedule 9 (protective provisions) shall have effect and subject to its provisions, the undertaker may—

- (a) acquire rights or impose restrictions over, the land belonging to statutory undertakers shown on the land plans within the Order limits and described in the book of reference; and
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Recovery of costs of new connections

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

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 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) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003~~(18)~~; and

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

PART 6

Miscellaneous and general

Operational land for purposes of the 1990 Act

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

Felling or lopping of trees and removal of hedgerows

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

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

(18) 2003 c.21. There are amendments to the Act which are not relevant to this Order.

(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, is to be determined under Part 1 of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised development—

- (a) subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised development; and
- (b) remove the specified important hedgerows as are within the Order limits and specified in Schedule 11 (removal of important hedgerows).

(5) The power conferred by paragraph (4) shall remove any obligation upon the undertaker to secure any consent to remove those hedgerows under the Hedgerows Regulations 1997⁽¹⁹⁾.

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

Certification of plans

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

- (a) the access and rights of way plans;
- (b) the archaeological written scheme of investigation;
- (c) the book of reference;
- (d) the CEMP;
- (e) the construction management strategy;
- (f) the crown land plans;
- (g) the CTMP;
- (h) the design drawings;
- (i) the dust management plan;
- (j) the environmental features plans;
- (k) the environmental statement;
- (l) the flood consequence assessment;
- (m) the frac-out contingency plan;
- (n) the habitat management plan;
- (o) the heritage designations plans;
- (p) the invasive weeds management plan;
- (q) the land plans;
- (r) the master key plan;
- (s) the overall location plan;
- (t) the pollution prevention and emergency response plan;
- (u) the public rights of way management strategy;
- (v) the transport assessment;

⁽¹⁹⁾ S.I.1997/1160, to which there are amendments not relevant to this Order.

- (w) the trees and hedges with the potential to be affected plans;
- (x) the waste management plan;
- (y) the water management plan; and
- (z) the works plans,

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

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

Service of notices

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

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

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

(3) For the purposes of section 7 of the Interpretation Act 1978⁽²⁰⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

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

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

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

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

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

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

⁽²⁰⁾ 1978 c. 30. There are amendments to this Act which are not relevant to this Order.

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

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

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

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

Arbitration

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

Procedure regarding certain approvals

36.—(1) Where an application is made to or request is made of the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any of the provisions of the Order such consent, agreement or approval must, if given, be given in writing and is not to be unreasonably withheld or delayed.

(2) Schedule 10 is to have effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the Requirements unless otherwise agreed between the undertaker and the relevant planning authority.

Crown rights

37.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
 - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
 - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

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

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

Signed by authority of the Secretary of State for Business, Energy and Industrial Strategy

Giles Scott
Head of Energy Infrastructure Planning and Coal
Liabilities
Department for Business, Energy and Industrial
Strategy

6th October 2016