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## STATUTORY INSTRUMENTS

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# 2014 No. 3331

## The Hornsea One Offshore Wind Farm Order 2014

### PART 5

#### Powers of acquisition etc.

##### Guarantees in respect of payment of compensation

**14.**—(1) The undertaker must not begin to exercise the powers in articles 15 to 25 of this Order in relation to any land unless it has first put in place either—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose which has been approved by the Secretary of State.

(2) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under the Order is to be treated as enforceable against the guarantor 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.

(3) The guarantee or alternative form of security is to be in place for a maximum of 20 years from the date on which relevant power is exercised.

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##### Commencement Information

**I1** Art. 14 in force at 31.12.2014, see [art. 1](#)

##### Compulsory acquisition of land

**15.** The undertaker may acquire compulsorily so much of the Order land shown numbered 404 on the land plans as is required for the authorised project or to facilitate, or is incidental, to it.

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##### Commencement Information

**I2** Art. 15 in force at 31.12.2014, see [art. 1](#)

##### Compulsory acquisition of rights

**16.**—(1) In the case of the Order land specified in column (1) of Schedule 5 (land in which new rights etc., may be acquired) the undertaker may acquire compulsorily such new rights by creating them as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the

undertaker acquires a right over land the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 6 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.

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

(5) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

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

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**Commencement Information**

**I3** Art. 16 in force at 31.12.2014, see [art. 1](#)

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

**17.**—(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 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(1).

(2) The authority conferred by article 23 (temporary use of land for carrying out the authorised project) 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.

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**Commencement Information**

**I4** Art. 17 in force at 31.12.2014, see [art. 1](#)

**Private rights**

**18.**—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under article 15 (compulsory acquisition of land) are extinguished—

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

whichever is the earliest.

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(1) [1981 c.66](#). Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act [1990 \(c.11\)](#). There are other amendments to the 1981 Act which are not relevant to this Order.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under article 16 (compulsory acquisition of rights) are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

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

whichever is the earliest.

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

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

(5) 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 25 (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,
  - (ii) the undertaker's appropriation of it,
  - (iii) the undertaker's entry onto it, or
  - (iv) the undertaker's taking temporary possession of it,
  - (v) that any or all of those paragraphs do not apply to any right specified in the notice;and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

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

- (a) is made with a person in or to whom the right 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.

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

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**Commencement Information**

**15** Art. 18 in force at 31.12.2014, see [art. 1](#)

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

**19.—(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 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 that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.

#### Commencement Information

**I6** Art. 19 in force at 31.12.2014, see [art. 1](#)

#### Acquisition of subsoil or airspace only

**20.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of, or the airspace over, the land referred to in article 15 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) does not prevent article 21 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

#### Commencement Information

**I7** Art. 20 in force at 31.12.2014, see [art. 1](#)

## Acquisition of part of certain properties

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

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

(b) a copy of this article is served on the owner with the notice to treat.

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

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

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

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

(a) without material detriment to the remainder of the land subject to the counter-notice; or

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

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

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

(a) without material detriment to the remainder of the land subject to the counter-notice; or

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

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

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

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

(b) the material detriment is confined to a part of the land subject to the counter-notice,

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

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

(a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and

(b) the material detriment is not confined to a part of the land subject to the counter-notice,

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

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

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

#### Commencement Information

**18** Art. 21 in force at 31.12.2014, see [art. 1](#)

### Rights under or over streets

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

(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 be 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.

#### Commencement Information

**19** Art. 22 in force at 31.12.2014, see [art. 1](#)

### Temporary use of land for carrying out the authorised project

**23.**—(1) The undertaker may, in connection with the carrying out of the authorised project—

- (a) enter on and take temporary possession of—

- (i) the Order land specified in columns (1) and (2) of Part 1 of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule;
    - (ii) any of the land referred to in article 15 (compulsory acquisition of land) and Schedule 5 (land in which only new rights etc. may be acquired) 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 buildings and vegetation from that land;
  - (c) construct temporary works (including the provision of means of access) and buildings on that land; and
  - (d) construct or carry out any works or operations specified in relation to that land in column (3) of Part 1 of Schedule 7, or any other mitigation works or operations (including land drainage restoration works).
- (2) The undertaker may, for the purpose of obtaining access to construct the authorised project—
  - (a) make temporary use, in common with other persons enjoying rights over that land, of access routes over the land specified in Part 2 of Schedule 7; and
  - (b) carry out any necessary works to improve those access routes (and for that purpose only take temporary possession of the area in which the work is to be carried out for the duration of that work).
- (3) Not less than 14 days before entering on and taking temporary possession of or using 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 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 specified 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 project specified in relation to that land in column (4) of Part 1 of Schedule 7;
  - (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 this 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.
- (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; but the undertaker is not required to—
  - (a) replace a building removed under this article; or
  - (b) restore the land on which any works have been constructed under paragraph (1)(d).
- (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, is to be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in

respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—

- (a) acquiring new rights over any part of that land under article 16 (compulsory acquisition of rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 20 (acquisition of subsoil or airspace only).

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

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

#### Commencement Information

**I10** Art. 23 in force at 31.12.2014, see [art. 1](#)

### Temporary use of land for maintaining authorised project

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

- (a) enter on and take temporary possession of any land referred to in paragraph (1) of article 23 (temporary use of land for carrying out the authorised project) if such possession is reasonably required for the purpose of maintaining the authorised project; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

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

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project 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 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, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in



respect of loss or damage arising from the maintenance of the authorised project, 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) In this article “the maintenance period”, in relation to any part of the authorised project, means the period of five years beginning with the date on which that part of the authorised project is first energised.

**Commencement Information**

**I11** Art. 24 in force at 31.12.2014, see [art. 1](#)

**Statutory undertakers**

**25.** Subject to the provisions of Schedule 12 (Protective Provisions), the undertaker may—

- (a) exercise the powers conferred by articles 15 (compulsory acquisition of land) and 16 (compulsory acquisition of rights) in relation to so much of any land referred to in those articles as belongs to statutory undertakers;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land referred to in those articles.

**Commencement Information**

**I12** Art. 25 in force at 31.12.2014, see [art. 1](#)

**Recovery of costs of new connections**

**26.—(1)** Where any apparatus of public utility undertakers or of a public communications provider is removed under article 25 (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 25 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 article—

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**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Hornsea One Offshore Wind Farm Order 2014. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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- (a) “public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(2); and
- (b) “public utility undertaker” has the same meaning as in the 1980 Act.

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**Commencement Information**

**I13** Art. 26 in force at 31.12.2014, see [art. 1](#)

**Changes to legislation:**

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

- Order modified by [S.I. 2016/471 art. 4Sch.](#)

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- art. 2(6) inserted by [S.I. 2015/1280 Sch.](#)