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STATUTORY INSTRUMENTS

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**2016 No. 818**

**The North Wales Wind Farms Connection Order 2016**

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1. This Order may be cited as the North Wales Wind Farms Connection Order 2016 and comes into force on 19th August 2016.

**Interpretation**

2.—(1) In this Order—

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

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

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

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

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

“1990 Act” means the Town and Country Planning Act 1990(6);

“1991 Act” means the New Roads and Street Works Act 1991(7);

“2008 Act” means the Planning Act 2008;

“access and rights of way plans” means the plans identified with document reference numbers 2.4.0 - 2.4.13 Option B (version 0) certified as the access and rights of way plans by the Secretary of State for the purposes of this Order;

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

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

“the book of reference” means the book of reference Option B (version 2) (as amended by the addendums to the Book of Reference Option B versions 2 and 3), and as certified by the Secretary of State as the book of reference under article 36;

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

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

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

“date of final commissioning” means the date on which the authorised development first comes into use by distributing electricity at 132kV on a commercial basis;

“design and construction report” means the design and construction report (version 1) document reference 7.1 and 7.2 certified as the design and construction report by the Secretary of State for the purposes of this Order;

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

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

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

“the land plans” means the plans identified with document reference numbers 2.2.0-2.2.13 Option B (version 1) 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 4 (limits of deviation) and shown on the works plans;

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

“NRW” means the Natural Resources Body for Wales;

“Order land” means the land required for, or required to facilitate or is incidental to, or affected by, the authorised development shown on the land plans and described in the book of reference;

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

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(8);

“relevant highway authority” means the local highway authority of the area to which the provision relates;

“relevant planning authority” means the local planning authority of the area to which the provision relates;

“Requirements” means those matters set out in Schedule 2 to this Order;

“SP Manweb PLC” means SP Manweb PLC (company registration number 02366937) whose registered office is at 3 Prenton Way, Prenton, CH43 3ET;

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

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

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

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

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

“undertaker” means SP Manweb PLC or any other person who has the benefit of this Order in accordance with article 7 or 8;

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

“the works plans” means the plans identified with document reference numbers 2.3.0-2.3.13 Option B (version 0) certified as the works plans by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictions are references to restrictions over land which interfere with the interests or rights of another and are for the benefit of land over which rights are acquired and created under this Order.

(3) All distances, directions and lengths referred to in this Order are approximate and distances between points are taken to be measured between the referenced points.

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

(5) References in this Order to numbered works are references to the works comprising the authorised development as numbered in Schedule 1 and shown on the works plans and a reference to numbered work 1 means numbered works 1A and 1B, a reference to numbered work 2 means numbered works 2A and 2B and a reference to numbered work 3 means numbered works 3A and 3B.

(6) 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 etc. granted by the Order**

3.—(1) The undertaker is granted development consent for the authorised development, as set out in Schedule 1 (authorised development), subject to the provisions of this Order including the Requirements set out in Schedule 2 (Requirements).

(2) Subject to paragraph (3), each numbered work must be situated on the corresponding numbered area shown on the works plans.

(3) Subject to paragraph (4), in constructing each numbered work, the undertaker may deviate within the corresponding numbered area shown on the works plans up to the limits of deviation provided for in article 4.

(4) Development consent is only granted for development within the Order limits.

#### **Limits of deviation**

4. In carrying out and maintaining the authorised development the undertaker may—

(a) deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation within the Order limits relating to each numbered work shown on those plans and carry out construction and maintenance activities for the purposes of the authorised development anywhere within the Order limits; and

(b) deviate vertically from the levels of the authorised development—

(i) to any extent not exceeding 2 metres upwards; or

(ii) to any extent downwards as may be found to be necessary or convenient.

### **Operation of authorised development**

5.—(1) The undertaker is authorised to keep installed the above ground electric line included in the authorised development.

(2) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the keeping installed or use of an electric line above ground.

### **Maintenance of authorised development**

6.—(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.

### **Benefit of the Order**

7.—(1) Subject to article 8 (consent to transfer benefit of the Order), and paragraph (2), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply where this Order provides an express benefit to owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

### **Consent to transfer benefit of the Order**

8.—(1) Subject to paragraph (4), the undertaker may—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (including any of the numbered works) and such related statutory rights as may be agreed in writing 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 (including any of the numbered works) 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), 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 subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The 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 a statutory undertaker;
- (b) the transferee or lessee is a person who holds a licence issued under section 6(1) of the Electricity Act 1989(9); or
- (c) the time limits for all 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 claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of all such claims;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or

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(9) 1989 c.29.

(v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) Where an exception in paragraph (4) applies, the undertaker must notify the Secretary of State in writing before transferring or granting any benefit referred to in paragraph (1).

## PART 3

### STREETS

#### Power to alter layout, etc., of streets

9.—(1) Subject to paragraph (3), the undertaker may for the purposes of the authorised development alter the layout of or carry out any works in the street in the case of permanent works as specified in column (2) of Part 1 of Schedule 3 (streets subject to permanent and temporary alteration of layout) in the manner specified in relation to that street in column (3) and in the case of temporary works as specified in column (2) of Part 2 of Schedule 3 (streets subject to permanent and temporary alteration of layout) in the manner specified in relation to that street in column (3).

(2) Regardless of the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing and maintaining the authorised development alter the layout of any street within the Order limits and, without limitation on the scope of this paragraph, the undertaker may—

- (a) permanently or temporarily altering the layout of any street or junction;
- (b) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (c) alter the level or increase the width of any kerb, footpath, footway, cycle track or verge;
- (d) reduce the width of the carriageway of the street;
- (e) make and maintain crossovers and passing place(s);
- (f) carry out works for the provision of parking places and unloading areas; and
- (g) execute any works to provide or improve sight lines.

(3) Unless otherwise agreed in writing with the street authority, the undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

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

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 56 days beginning with the date on which the application was made, it is deemed to have granted consent.

(6) Paragraphs (2)(a), (3), (4) and (5) do not apply where the undertaker is the street authority for a street in which the works are being carried out.

#### Street works

10.—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 4 (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 and keep apparatus in the street;
- (d) maintain apparatus in the street or change its position;
- (e) carry out all necessary works required for the exercise of article 9 (power to alter layout, etc., of streets);
- (f) place and keep during the construction and installation of the authorised development scaffolding on any verge to a 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) to (g).

(2) The authority given by paragraph (1) is a statutory right for the purposes of section 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 Electricity Act 1989.

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

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

#### **Construction and maintenance of new or altered means of access**

**11.**—(1) Those parts of each means of access specified in Part 1 of Schedule 5 (access) 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 until such time as the works are restored in accordance with article 9(3), or restored otherwise as agreed with the street authority.

(2) Those parts of each means of access specified in Part 4 of Schedule 5 (access) 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) Those restoration works carried out pursuant to article 9(3) identified in Part 2 of Schedule 5 (access) 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 (unless an agreement has been entered into between the undertaker and the relevant highway authority under article 15 in relation to the maintenance of these restoration works).

(4) Those restoration works carried out pursuant to article 9(3) identified in Part 3 of Schedule 5 (access) which are not intended to be a public highway must be completed to the reasonable satisfaction of the street 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 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 to traffic.

(6) For the purposes of a defence under paragraph (5), 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 prohibition or restriction of use of streets and public rights of way**

**12.**—(1) The undertaker, during and for the purposes of carrying out the authorised development, may temporarily alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

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

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street where the use has been prohibited or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

(3) The undertaker must provide reasonable access for non-motorised users (including pedestrians) going to or from premises abutting a street affected by the temporary alteration, diversion, prohibition of use or restriction of use of a street under this article if there would otherwise be no such access, and ensure that relevant provision is made for residents to park and for services to access properties which may be affected by the temporary alteration, diversion, prohibition of use or restriction of use of a street under this article.

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily alter, divert, prohibit the use of or restrict the use of the streets specified in column (2) of Schedule 6 (temporary prohibition or restriction of the use of streets) to the extent specified in column (3) of that Schedule.

- (5) The undertaker must not temporarily alter, divert, prohibit the use of or restrict the use of—
- (a) any street specified in column (2) of Schedule 6 (temporary prohibition or restriction of the use of streets) without first consulting the street authority; and
  - (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

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

(7) This article does not remove the requirement for the undertaker to obtain any order required under sections 1, 9 or 22BB of the 1984 Act.

### Traffic regulation

**13.**—(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 the date of final commissioning—

- (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 prohibition or restrictions relating to vehicular traffic only on a road and paragraph (1) of this article unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do 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 12 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,

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 (road traffic contraventions subject to civil enforcement)(10).

(4) In this article—

- (a) subject to sub-paragraph (b) expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a “road” means a road that is a public highway maintained by and at the expense of the traffic authority.

(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

**14.** The undertaker may, for the purposes of the authorised development and with the consent of the relevant planning authority, after consultation with the relevant 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.

### Agreements with street authorities

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

- (a) the construction of any new street (including any structure carrying the street under or over the authorised development) authorised by this Order;

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(10) 2004 c.18. There are amendments to this Act not relevant to this Order.



- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) any alteration, diversion, prohibition or restriction in the use of a street authorised by this Order; or
  - (d) the carrying out in the street of any of the works referred to in article 11(1) (construction and maintenance of new or altered means of access).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## PART 4

### SUPPLEMENTAL POWERS

#### Discharge of water

**16.**—(1) Subject to paragraphs (2) to (8), 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(11) (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.

- (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; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Except as otherwise authorised under this Order, the undertaker must not, in carrying out or maintaining works, 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) 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 56 days of receiving an application that person is deemed to have granted consent or given approval, as the case may be.

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(11) 1991 c.56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c.43) and sections 99(2), (4), (5)(a), (5)(b),(5)(c) and 36(2) of the Water Act 2003 (c.37).

(8) This article does not authorise any water discharge activities or groundwater activities for which a licence is required pursuant to regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(12).

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to NRW, a harbour authority within the meaning of section 57 of the Harbours Act 1964(13) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park 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.

### **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 on to 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 relevant highway authority; or
  - (b) in a private street without the consent of the street authority.
- (5) The undertaker must—
- (a) make good any damage to the land where it has made a trial hole; and
  - (b) 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.
- (6) If either a relevant highway authority or street authority which receives an application for consent fails to notify the undertaker of its decision within 56 days of receiving the application for consent—

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(12) S.I. 2010/675.

(13) 1964 c.40. There are amendments to section 57 that are not relevant to this Order.

(14) 1991 c.57 as amended by S.I. 2009/3104.

- (a) under paragraph (4)(a) in the case of a relevant highway authority; or
  - (b) under paragraph (4)(b) in the case of a street authority,
- that authority is deemed to have granted consent.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of rights**

**18.**—(1) Subject to article 19, the undertaker may create and acquire compulsorily the rights over the Order land and impose the restrictions affecting the Order land described in the book of reference and shown on the land plans.

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

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

(4) In any case where the creation and acquisition of rights or the imposition of a restriction under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictions to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power pursuant to 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) Nothing in this article authorises the acquisition of rights over, or the imposition of restrictions affecting, an interest which is for the time being held by or on behalf of the Crown.

#### **Crown land**

**19.** The undertaker may exercise any right under this Order to acquire compulsorily an interest in any land which is Crown land (as defined in the 2008 Act) forming part of The Crown Estate, provided that the interest to be acquired is—

- (a) identified in the book of reference;
- (b) for the time being held otherwise than by or on behalf of the Crown; and
- (c) in a plot that is expressly referred to in the letter provided by the Crown Estate Commissioners with regard to section 135 of the 2008 Act dated 27th July 2016.

#### **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 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 use of land arising by virtue of contract,
 caused by the carrying out or use of the authorised development 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.
- (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 must be applied to the construction of paragraph (2) (with any necessary modifications).

#### **Time limit for exercise of authority to acquire rights compulsorily**

- 21.**—(1) If, after the end of the period of 5 years beginning on the day on which the Order is made—
- (a) no notice to treat has been served under Part 1 of the 1965 Act; and
  - (b) no declaration has been executed under section 4 of the 1981 Act as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(15)

the authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases.

- (2) Nothing in paragraph (1) 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.

#### **Funding**

- 22.**—(1) The undertaker must not begin to exercise the powers provided within Parts 3, 4, 5 and 6 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 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 the relevant power is exercised.

#### **Private rights**

- 23.**—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to the compulsory creation and acquisition of rights or the imposition of restrictions under this Order are suspended and unenforceable or, where so notified by the undertaker to the

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(15) 1981 c.66.

person with the benefit of such private rights or restrictive covenant, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right created and acquired or the burden of the restriction imposed—

- (a) as from the date of creation and 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 (power of entry) in pursuance of the right,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over Order land owned by the undertaker or in which the undertaker has the benefit of an easement are extinguished on commencement of any activity authorised by this Order which would otherwise interfere with or breach such rights or restrictive covenants.

(3) Subject to the provisions of this article, all private rights and 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 and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

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

(5) This article does not apply in relation to any right 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.

(6) Paragraphs (1) to (2) and (4) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the creation and acquisition of rights or the imposition of restrictions 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 at any time between the undertaker and the person in or to whom the right or restrictive covenant 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 or restrictive covenant 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 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 natural right to support and personal covenants.

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

24.—(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 must be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of rights under this Order.

### **Acquisition of subsoil or airspace only**

**25.**—(1) The undertaker may acquire compulsorily such rights in the subsoil of, or the airspace over, the land referred to in article 18 (compulsory acquisition of rights) as may be required for any purpose for which rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring any greater interest in that land.

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

### **Rights under or over streets**

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

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

- (3) Paragraph (2) is not to 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 in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not to 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.

### **Temporary use of land for carrying out the authorised development**

27.—(1) Subject to paragraphs (2) to (11), 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 columns (1) and (2) of Schedule 8 (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 development specified in column (4) 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 (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);

(b) remove any electric line, electrical plant, buildings, structures, poles, means of enclosure, apparatus and vegetation from that land;

(c) construct temporary works and permanent works (including the provision of means of access) and structures on that land and use that land as temporary laydown area, storage area and working area;

(d) construct any works specified in relation to that land in column (3) of Schedule 8; and

(e) carry out mitigation works required pursuant to the Requirements in Schedule 2.

(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 after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

(4) 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 has otherwise acquired the rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under either paragraph (1)(a)(i) or (1)(a)(ii), remove all temporary and permanent 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 electric line, electrical plant, buildings, structures, poles and apparatus removed under this article; or

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

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

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

(7) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

- (a) acquiring new rights or imposing restrictions on any part of the Order land under article 18 (compulsory acquisition of rights); or
- (b) acquiring any right in the subsoil or of airspace over the Order land under article 25 (acquisition of subsoil or airspace only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire 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 taking of temporary possession more than once in relation to any land specified in Schedule 8.

### **Temporary use of land for maintaining and decommissioning the authorised development**

**28.—**(1) Subject to paragraphs (2) to (10), at any time during the maintenance period and decommissioning period relating to any part of the authorised development, the undertaker may—

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

(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 or decommissioning 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 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 or decommissioning 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 to be required to acquire 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” means the period of 5 years beginning with the date of final commissioning except where—

(a) the authorised development is landscape planting or reinstatement planting where “the maintenance period” means such period as is agreed between the undertaker and the relevant planning authority pursuant to Requirement 5(1) and Requirement 7(2) beginning with the date on which that part of the landscape planting or reinstatement planting is completed provided that such period shall not exceed 7 years, or

(b) the authorised development is the laying of hedgerows pursuant to paragraph 2.7.4 of the outline hedgerow management plan where “the maintenance period” means a period of 15 years beginning with the date on which that part of the hedgerow is first planted;

“the decommissioning period” means the period in which decommissioning is to take place, as agreed with the relevant planning authority in the decommissioning and site restoration scheme to be approved pursuant to Requirement 17.

### **Statutory undertakers**

**29.** Subject to the provisions of Schedule 9 (protective provisions), the undertaker may—

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

### **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 to be 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 (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 to be 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—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(16); and

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

## PART 6

### OPERATIONS

#### **Felling or lopping of trees and removal of hedgerows**

**31.**—(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—

- (a) from obstructing or interfering with the construction, maintenance or use 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, 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 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(17).

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

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(16) 2003 c. 21.

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

## PART 7

### MISCELLANEOUS AND GENERAL

#### Application of landlord and tenant law

**32.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development or the right to use the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, or use 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 party to the lease of any obligation of any other party under the lease.

#### Disapplication of legislative provisions

**33.** Section 23 of the Land Drainage Act 1991<sup>(18)</sup> does not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised development.

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

**34.**—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990 (summary proceedings by persons aggrieved by statutory nuisances)<sup>(19)</sup> 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 the defendant shows that the nuisance—

- (a) 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 sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974<sup>(20)</sup>;

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<sup>(18)</sup> 1991 c.59.

<sup>(19)</sup> 1990 c. 43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c.16); Section 79 was amended by sections 101 and 102 of the same Act.

<sup>(20)</sup> 1974 c.40.

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

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 is not to 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.

### **Crown rights**

**35.**—(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 use, enter upon or in any manner interfere with any land or rights of any description—
  - (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; or
- (b) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory purchase of any interest in any Crown land (as defined in the 2008 Act) for the time being held otherwise than by or on behalf of the Crown.

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

### **Certification of plans etc.**

**36.**—(1) The undertaker must, as soon as practicable after the date on which this Order is made, submit to the Secretary of State copies of the documents listed in Schedule 12 (documents to be certified) for certification that they are true copies of the plans or documents referred to in this Order.

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

### **Application and modification of legislative provisions**

**37.** Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments referred to in that Schedule in their application in relation to the compulsory acquisition under this Order of a right over land by the creation of a new right.

### **Service of notices**

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

- (a) by post;

- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
  - (c) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.
- (2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.
- (3) For the purposes of section 7 of the Interpretation Act 1978(21) 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 that body corporate, the registered or principal office of that body; and
  - (b) in any other case, the last known address of that person at that 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 or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person 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 the 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 seven days of receipt that the recipient requires a paper copy of all or any 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 an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
  - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 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—

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(21) 1978 c.30. Section 7 was amended by paragraph 19 of Schedule 10 to the Road Traffic Regulation Act 1984 (c.27). There are other amendments not relevant to this Order.

- “address” includes any number or address used for the purposes of electronic transmission;
- “electronic transmission” means a communication transmitted—
- (a) by means of an electronic communications network, or
  - (b) by other means in electronic form.

**Procedure in relation to certain approvals etc.**

**39.**—(1) Where an application is made to or request is made of the relevant planning authority, a relevant highway authority, a traffic 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 (not including the Requirements), such consent, agreement or approval to be validly given, must be given in writing and must not be unreasonably withheld or delayed.

(2) Schedule 10 (procedure for discharge of Requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the Requirements and any other consent, agreement or approval required under this Order.

**Arbitration**

**40.** Subject to article 38 (procedure in relation to certain approvals etc.) and except where otherwise provided for in this Order any difference under any provision of this Order, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the Secretary of State.

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

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

28th July 2016