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STATUTORY INSTRUMENTS

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**2016 No. 844**

**The Hornsea Two Offshore Wind Farm Order 2016**

**PART 5**

**Powers of acquisition, etc.**

**Compulsory acquisition of land**

**18.**—(1) Optimus Wind may, with the consent of Breesea, such consent not to be unreasonably withheld, acquire compulsorily so much of the Order land as is required for the Project A works, the shared works or to facilitate, or is incidental to, the construction, operation and maintenance of those works.

(2) Breesea may, with the consent of Optimus Wind, such consent not to be unreasonably withheld, acquire compulsorily so much of the Order land as is required for the Project B works, the shared works or to facilitate, or is incidental to, the construction, operation and maintenance of those works.

(3) If the undertaker whose consent is required under paragraph (1) or (2) fails to notify the undertaker requesting consent of its decision within 28 days of receiving an application for consent, the first-mentioned undertaker is deemed to have given consent.

(4) This article is subject to—

- (a) article 19(3) (compulsory acquisition of rights); and
- (b) article 26(10) (temporary use of land for carrying out authorised project).

**Compulsory acquisition of rights**

**19.**—(1) Subject to paragraph (3), Optimus Wind may, with the consent of Breesea, such consent not to be unreasonably withheld, acquire compulsorily such rights or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land) by creating them as well as by acquiring rights already in existence.

(2) Subject to paragraph (3), Breesea may, with the consent of Optimus Wind, such consent not to be unreasonably withheld, acquire compulsorily such rights or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 18 by creating them as well as by acquiring rights already in existence.

(3) In the case of the Order land set out in column (1) of Schedule 5 (land in which new rights etc., may be acquired), the powers of compulsory acquisition conferred under paragraphs (1) and (2) and under article 18 are limited to the acquisition of such new rights or the imposition of such restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(4) 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, etc.)), where the

undertaker acquires an existing right over land or imposes a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

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

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

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

(8) 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.

(9) If the undertaker whose consent is required under paragraph (1) or (2) fails to notify the undertaker requesting consent of its decision within 28 days of receiving an application for consent, the first-mentioned undertaker is deemed to have given consent.

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

**20.**—(1) After 15th August 2021—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the 1981 Act(1), as applied by article 22 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 26 ceases at the end of 15th August 2021, but 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 taken, on or before that date.

#### **Private rights**

**21.**—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under article 18 cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 18—

- (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(2) (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 19 cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

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(1) Section 4 is amended, from a date to be appointed, by sections 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c.22).

(2) Section 11(1) was amended by paragraph 14 of Schedule 4 to the Acquisition of Land Act 1981 and paragraph 12 of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1).

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, 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 earlier.

(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, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

(4) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with section 152 of the 2008 Act 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<sup>(3)</sup> (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 28 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land, or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
- (ii) the undertaker's appropriation of 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; or

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

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

- (a) is made with a person in 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,

the agreement is effective in respect of the persons so deriving title, whether 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.

(9) Where—

- (a) one undertaker exercises a power under article 18 or 19 in respect of land or rights; and
- (b) the other undertaker subsequently exercises such a power in respect of the same land or rights,

any right so acquired by the undertaker referred to in sub-paragraph (a) does not cease to have effect in consequence of the exercise of the power referred to in sub-paragraph (b) unless the undertaker referred to in sub-paragraph (a) gives consent, such consent not to be unreasonably withheld.

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(3) Section 138 was amended by section 23(4) of the Growth and Industry Act 2013 (c.27).

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

- 22.**—(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), substitute—
- “(1) Before making a declaration under section 4 with respect to any land that is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice that 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 where the land is situated.”.
- (4) In that section, in subsection (2)—
- (a) for “(1)(b)”, substitute “(1)”; and
- (b) after “given”, insert “and published”.
- (5) In that section, for subsections (5) and (6), substitute—
- “(5) For the purposes of this section, a person has a relevant interest in land if—
- (a) the person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) the person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds 1 month.”.
- (6) In section 5 (earliest date for execution of declaration)—
- (a) in subsection (1), after “publication”, insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).
- (7) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (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<sup>(4)</sup> (application of compulsory acquisition provisions) to the compulsory acquisition of land under this Order.

**Acquisition of subsoil or airspace only**

- 23.**—(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 18 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 under paragraph (1) the undertaker acquires any part of, or rights in, the subsoil of or the airspace over, land, the undertaker is not required to acquire an interest in any other part of the land.
- (3) Paragraph (2) does not prevent article 24 (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.

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(4) Section 125 was amended by paragraph 17 of Schedule 16 to the Housing and Planning Act 2016.

### **Acquisition of part of certain properties**

**24.**—(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 that 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 must, unless the undertaker agrees to take the land subject to the counter-notice, 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 that 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 that 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 6 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.

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

**25.**—(1) The undertaker may—

- (a) 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
- (b) 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 that forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who—

- (a) 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
- (b) suffers loss as a result,

is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

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

**26.**—(1) Each undertaker may, from time to time, alone or in common with the other undertaker, in connection with the carrying out of the authorised project—

(a) enter on and take temporary possession of—

- (i) the Order land set out in column (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) the Order land set out in column (2) of Part 2 of Schedule 7 for the purpose specified in relation to that land in column (3) of that Schedule;

- (iii) any of the land referred to in article 18 and Schedule 5 in respect of which (other than in connection with the acquisition of rights only) no notice of entry has been served under section 11 of the 1965 Act 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 Parts 1 and 2 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 set out in Part 3 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) The undertaker may for the purpose of obtaining access to the compensation compounds—
- (a) make temporary use, in common with other persons enjoying rights over that land, of access routes over the land set out in Part 4 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).
- (4) 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.
- (5) The undertaker must 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 1 year beginning with—
- (a) in the case of land referred to in paragraph (1)(a)(i), the date of completion of the construction, installation or implementation 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), the date on which the compensation compound ceases to be required;
  - (c) in the case of land referred to in paragraph (1)(a)(iii), the date of completion of the construction, installation or implementation 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.
- (6) 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 land on which any works have been constructed under paragraph (1)(d).
- (7) 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 any power conferred by this article.

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

(9) 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 (7).

(10) The undertaker may not under this Order compulsorily acquire the land referred to in paragraphs (1)(a)(i) and (ii), (2)(a) or (3)(a); and the undertaker may not acquire rights in or impose restrictive covenants over any part of that land unless it is set out in column (1) of Schedule 5.

(11) 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.

(12) Section 13 of the 1965 Act<sup>(5)</sup> (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.

(13) The powers in this article may be exercised by each undertaker in relation to the same land at the same time as the other undertaker or at different times, and may be exercised more than once.

### **Temporary use of land for maintaining authorised project**

27.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, each undertaker may, alone or in common with the other undertaker,—

- (a) enter on and take temporary possession of any land referred to in article 26(1)(a)(i) or (iii) 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 remain in possession of land under this article only 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 is 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 powers in this article.

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

(5) Section 13 was amended by section 139 of, and paragraph 28(2) of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).



(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act 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 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.

(11) In this article “maintenance period”, in relation to any part of the authorised project, means—

- (a) the period of 5 years beginning with the date on which that part of the authorised project is first energised; and
- (b) any period falling between the date at which temporary possession is no longer permitted under article 26(5)(a) or (c) and the date on which that part of the authorised project is first energised.

(12) The powers in this article may be exercised by each undertaker in relation to the same land at the same time as the other undertaker or at different times, and may be exercised more than once.

### **Statutory undertakers**

**28.** Subject to Schedule 12 (protective provisions), the undertaker may—

- (a) exercise the powers conferred by articles 18 and 19 in relation to so much of any land referred to in those articles as belongs to statutory undertakers; and
- (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.

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

**29.**—(1) Where any apparatus of a public utility undertaker or a public communications provider is removed under article 28 (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 28, any person who is—

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

- “public communications provider” has the same meaning as in section 151(1) of the 2003 Act;
- “public utility undertaker” has the same meaning as in the 1980 Act<sup>(6)</sup>.

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(6) “Public utility undertaker” is defined in section 329.