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STATUTORY INSTRUMENTS

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**2016 No. 880**

The Triton Knoll Electrical System Order 2016

PART 1

Preliminary

**Citation and commencement**

- 1.—(1) This Order may be cited as the Triton Knoll Electrical System Order 2016.
- (2) This Order comes into force on 27th September 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);

“1989 Act” means the Electricity Act 1989(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;

“2009 Act” means the Marine and Coastal Access Act 2009(8);

“access to works and streets plans” means the plans certified as the access to works and streets plans by the Secretary of State under article 35 (certification of plans, etc.);

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (ancillary works) and any other works authorised by this Order that are not development within the meaning of section 32 of the 2008 Act;

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

“authorised project” means the authorised development and the ancillary works authorised by this Order;

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(1) 1961 c.33.  
(2) 1965 c.56.  
(3) 1980 c.66.  
(4) 1981 c.66.  
(5) 1989 c.29.  
(6) 1990 c.8.  
(7) 1991 c.22.  
(8) 2009 c.23.

“book of reference” means the book of reference certified by the Secretary of State as the book of reference under article 35;

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

“cable” includes fibre-optic cables either within the cable or laid alongside it;

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

“cable protection” means measures to protect cables from physical damage and exposure due to loss of sea bed sediment including (but not limited to) the use of bagged solutions filled with gravel or other materials as approved by the MMO, protective aprons or covering mattresses, flow energy dissipation devices or rock and gravel placement;

“collector substations” means the collector substations authorised by the Triton Knoll Offshore Wind Farm Order 2013<sup>(9)</sup>;

“commence” means begin to carry out—

- (a) the activities authorised by the deemed marine licence other than pre-construction surveys and monitoring; and
- (b) in respect of any other works comprised in the authorised project, except as provided otherwise in this Order, any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of—
  - (i) site clearance;
  - (ii) pre-construction archaeological investigations;
  - (iii) environmental surveys;
  - (iv) removal of hedgerows;
  - (v) investigations for the purpose of assessing ground conditions;
  - (vi) diversion and laying of services;
  - (vii) erection of any temporary means of enclosure related to pre-construction archaeological investigations and environmental surveys;
  - (viii) the temporary display of site notices or advertisements;

and “commencement” must be construed accordingly;

“completion” means, in respect of any stage of works, the end of final testing of that stage;

“construction compound” means a temporary construction site associated with the onshore works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“crossings schedule” means the document certified as the crossings schedule by the Secretary of State under article 35;

“deemed marine licence” means the marine licence set out in Schedule 9 (deemed licence under Marine and Coastal Access Act 2009);

“design principles document” means the design principles document certified by the Secretary of State under article 35;

“electrical circuit” means a number of electrical conductors necessary to transmit electricity between 2 points within the authorised development (onshore) to take the form of 3 separate

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(9) S.I. 2013/1734.

cables laid in cable ducts including fibre-optic cables and earthing cables either within the electrical circuit or laid alongside;

“environmental statement” means the document certified as the environmental statement by the Secretary of State under article 35;

“external electrical equipment” means any electrical equipment in relation to Work No. 9 or 50 that is not housed within a building and has been assessed in the environmental statement and is otherwise referred to as “external transmission components” in the environmental statement and “additional electrical infrastructure” in the design principles document;

“hedgerow plans” means the plans certified as the hedgerow plans by the Secretary of State under article 35;

“highway” and “highway authority” have the same meaning as in the 1980 Act<sup>(10)</sup>;

“IEC enabling works” means, in relation to Work No. 9,—

- (a) site clearance;
- (b) the establishment of temporary working areas;
- (c) temporary fencing;
- (d) the installation of construction haul roads;
- (e) ground works including the installation of cabling ducting and the relocation and installation of below-ground utilities and drainage;
- (f) ground-raising and establishment of stoned site platform; and
- (g) electrical earthing works;

“intermediate electrical compound” means the area containing (but not limited to) switchgear, busbars, capacitors, reactors, reactive power compensation equipment, filters, cooling equipment, control and welfare buildings, lightning rods (if required), internal roads, security fencing and other associated equipment, structures and buildings including noise-attenuation works;

“land plans” means the plans certified as the land plans by the Secretary of State under article 35;

“landfall transition joint bay” means an underground pit where the offshore cables comprised in Work No. 2 are joined to the onshore works;

“limits of deviation” means the limits for the Works as shown on the works plans;

“main river” has the meaning given by the Water Resources Act 1991<sup>(11)</sup>;

“maintain” includes—

- (a) inspect, upkeep, repair, adjust and alter; and
  - (b) in relation to any of the ancillary works, remove, reconstruct and replace,
- to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“mean low water” means the average height of all low waters above chart datum;

“MHWS” (mean high water springs) means the average throughout a year of the heights of 2 successive high waters during the periods of 24 hours when the range of the tide is greatest, as defined by the MMO and shown on the Order limits plans;

“MMO” means the Marine Management Organisation;

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<sup>(10)</sup> “Highway” is defined in section 328(1). For “highway authority”, see section 1.

<sup>(11)</sup> 1991 c.57. “Main river” is defined in section 113(1). The definition was amended by section 59(3) of the Water Act 2014 (c.21).

“onshore works” means Work Nos. 2 to 56 and any related further associated development in connection with those Works including, in relation to the installation of electrical circuits and cable ducts jointing bays, manholes, marker posts and other works associated with the installation of electrical circuits and cable ducts;

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

“Order limits” means the limits shown on the Order limits plans within which the authorised project may be carried out, whose grid co-ordinates seaward of MHWS are set out in the table in paragraph 2 of Part 1 of Schedule 1;

“Order limits plans” means the plans certified as the Order limits plans by the Secretary of State under article 35;

“outline access management plan” means the document certified as the outline access management plan by the Secretary of State under article 35;

“outline code of construction practice (onshore)” means the document certified as the outline code of construction practice (onshore) by the Secretary of State under article 35;

“outline landscape strategy and ecological management plan” means the document certified as the outline landscape strategy and ecological management plan by the Secretary of State under article 35;

“outline onshore written scheme of investigation” means the document certified as the outline onshore written scheme of investigation by the Secretary of State under article 35;

“outline traffic management plan” means the document certified as the outline traffic management plan by the Secretary of State under article 35;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981<sup>(12)</sup>;

“pipeline crossings” means the crossing of existing subsea pipelines by the cables authorised by this Order together with physical protection measures including concrete mattresses or rock placement;

“public rights of way plans” means the plans certified as the public rights of way plans by the Secretary of State under article 35;

“relevant planning authority”, in relation to any land, means the district planning authority for the area in which the land is situated;

“Requirement” means a Requirement set out in Part 3 of Schedule 1; and a reference to a numbered Requirement is a reference to the Requirement set out in the paragraph of that Part with the same number;

“statutory nature conservation body” means the government’s advisor on the natural environment;

“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<sup>(13)</sup>, together with land on the verge of a street or between 2 carriageways, and includes part of a street;

“substation enabling works” means, in relation to Work No. 50,—

- (a) site clearance;
- (b) the establishment of temporary working areas;
- (c) temporary fencing;

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<sup>(12)</sup> 1981 c.67. The definition was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c.34).

<sup>(13)</sup> Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c.26).

- (d) the installation of construction haul roads;
- (e) ground works including the installation of cabling ducts and the relocation and installation of below-ground utilities and drainage;
- (f) ground-raising and establishment of stoned site platform; and
- (g) electrical earthing works;

“temporary highways alterations” includes temporary removal and replacement of street furniture and the temporary plating and matting of grass verges to be carried out within the highway boundary;

“trenchless techniques” means the installation of electrical circuits by means of boring techniques for installing cable ducts including horizontal directional drilling, pipe jacking/horizontal auger boring and micro-boring;

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

“Trinity House” means the Corporation of Trinity House of Deptford Strond;

“undertaker” means, subject to article 5(9) (transfer of benefit of Order), Triton Knoll Offshore Wind Farm Limited (company number 03696654);

“unlicensed works” means works needed to connect the authorised project to the National Grid substation at Bicker Fen that National Grid is not required, under its transmission licence, to carry out itself including (but not limited to) cabling, cable sealing ends, circuit breakers, surge arrestors, dis-connectors, transformers, busbars and busbar clamp measuring equipment, relay marshalling rooms and electrical earthing works;

“vessel” means every description of vessel, however propelled or moved, and includes a non-displacement craft, a personal watercraft, a seaplane on the surface of the water, a hydrofoil vessel, a hovercraft or any other amphibious vehicle and any other thing constructed or adapted for movement through, in, on or over water and which is at the time in, on or over water;

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

“Work” means a Work set out in Part 1 of Schedule 1; and a reference to a Work designated by a number, or by a combination of a number and a letter (for example, “Work No. 3A”) is a reference to the Work so designated in that Part;

“works plans” means the plans certified as the works plans by the Secretary of State under article 35.

(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.

(3) All distances, directions and lengths referred to in this Order are approximate, except for the parameters referred to in—

- (a) Requirements 3 and 5; and
- (b) Condition 1 of the deemed marine licence.

(4) References in this Order to points identified by letters must be construed as references to the points so lettered on the works plans unless otherwise stated.

(5) The expression “includes” must be construed without limitation.

## PART 2

### Principal powers

#### Development consent granted by Order

3.—(1) Subject to the provisions of this Order and to the Requirements, the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Each Work may be constructed and maintained only within the limits of deviation for that Work.

(3) Schedule 1 (authorised project) has effect.

#### Maintenance of authorised project

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

#### Transfer of benefit of Order

5.—(1) Except as otherwise provided in this Order, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) The undertaker may—

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

(3) The consent of the Secretary of State is required for a transfer or grant under paragraph (2), except where—

- (a) the transfer or grant is to a person licensed under section 6 of the 1989 Act<sup>(14)</sup>; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects on land under this Order have elapsed and either no such claim has been made or, if such a claim has been made,—
  - (i) the claim has been comprised or withdrawn;
  - (ii) compensation has been paid in final settlement of the claim;
  - (iii) payment of compensation into court has taken place in lieu of settlement of the claim; or
  - (iv) a tribunal or court of competent jurisdiction has determined that no compensation is payable in respect of the claim.

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<sup>(14)</sup> Section 6 was substituted by section 30 of the Utilities Act 2000 (c.27) and amended by sections 136 and 145 of, and by Schedule 23 to, the Energy Act 2004 (c.20) and by S.I. 2011/2704 and 2012/2400.

(4) Where the consent of the Secretary of State is required for a transfer or grant under paragraph (2), the Secretary of State must consult the MMO before giving consent if the proposed transfer or grant is relevant to the exercise of functions within the MMO's jurisdiction.

(5) Where there is a transfer or grant under paragraph (2), the exercise by the transferee or, as the case may be, by the lessee of any benefit or right conferred by the transfer or grant is subject to the same restrictions, liabilities and obligations as would apply under this Order if the benefit or right were exercised by the undertaker.

(6) Despite anything in Part 4 of the 2009 Act (marine licensing), but subject to paragraphs (3) to (5), the undertaker may transfer or grant under paragraph (2) any of the provisions set out in Part 1 of the deemed marine licence together with the corresponding conditions set out in Part 2 of the licence (and subsections (7) and (8) of section 72 of the 2009 Act do not apply to such a transfer or grant).

(7) The undertaker must give notice in writing of any transfer or grant under paragraph (2)—

- (a) to the Secretary of State; and
- (b) if the transfer or grant is relevant to the exercise of functions within the MMO's or the relevant planning authority's jurisdiction, to the MMO or relevant planning authority (or to both),

at least 10 days before the transfer or grant takes effect or, if the transfer or grant is relevant to the exercise of functions within the MMO's jurisdiction and the Secretary of State's consent is not required for the transfer or grant, at least 28 days before the transfer or grant takes effect.

(8) The notice must—

- (a) state—
  - (i) the name and contact details of the transferee or lessee;
  - (ii) the date on which the transfer or grant will take effect;
  - (iii) the provisions to be transferred or granted; and
  - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (5), will apply to the transferee or lessee;
- (b) be accompanied by—
  - (i) where relevant, a plan showing the Works or areas to which the transfer or grant relates;
  - (ii) where the Secretary of State's consent is needed for the transfer or grant, a copy of the consent; and
  - (iii) a copy of the document effecting the transfer or grant signed by the person making the transfer or grant and the transferee or lessee; and
- (c) be signed by the person making the transfer or grant and the transferee or lessee.

(9) Where there is a transfer or grant under paragraph (2), references in this Order to the undertaker, except in paragraph (5), include references to the transferee or the lessee.

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

6.—(1) Regulation 6 of the Hedgerows Regulations 1997<sup>(15)</sup> is modified so as to read for the purposes of this Order only as if the following were inserted after paragraph (1)(j)—

- “(k) for carrying out development which has been authorised by development consent granted under the Planning Act 2008.”.

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<sup>(15)</sup> S.I. 1997/1160. Regulation 6 was amended by paragraph 35 of Schedule 1 to S.I. 2015/377.

(2) The following provisions do 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 project—

- (a) the Environmental Permitting (England and Wales) Regulations 2010<sup>(16)</sup>, to the extent that they require a permit for anything that would have required consent under section 109 of the Water Resources Act 1991 immediately before the repeal of that section;
- (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991<sup>(17)</sup> that require consent or approval for the carrying out of works;
- (c) section 23 of the Land Drainage Act 1991<sup>(18)</sup> (prohibition of obstructions, etc. in watercourses); and
- (d) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991 (powers to make byelaws) that require consent or approval for the carrying out of works.

(3) The provisions of the Lindsey County Council (Sandhills) Act 1932<sup>(19)</sup> do not apply in relation to the exercise of any power conferred by this Order.

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

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(20)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order may be made, and no fine 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 project and is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site), of the Control of Pollution Act 1974<sup>(21)</sup>;
- (b) is a consequence of the construction or maintenance of the authorised project and cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised project and 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 does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.

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<sup>(16)</sup> [S.I. 2010/675](#). See amendments made by [S.I. 2016/475](#).

<sup>(17)</sup> Paragraph 5 was amended by section 100 of the Natural Environment and Rural Communities Act 2006 ([c.16](#)), section 84(2) of, and paragraph 3 of Schedule 11 to, the Marine and Coastal Access Act 2009, paragraph 49 of Schedule 2 to the Flood and Water Management Act 2010 ([c.29](#)) and paragraph 315 of Schedule 2 to [S.I. 2013/755](#). Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 ([c.25](#)) and section 224 of, and paragraph 24 of Schedule 16 and Part 5 of Schedule 22 to, the Marine and Coastal Access Act 2009. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

<sup>(18)</sup> [1991 c.59](#). Section 23 was amended by paragraph 192 of Schedule 22 to the Environment Act 1995, paragraph 32 of Schedule 2 to the Flood and Water Management Act 2010 and [S.I. 2013/755](#). Section 66 was amended by paragraph 38 of Schedule 2 to the Flood and Water Management Act 2010 and by section 86(3) of the Water Act 2014.

<sup>(19)</sup> 1932 c. lxxxvi.

<sup>(20)</sup> [1990 c.43](#). Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995. Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 ([c.40](#)) and paragraph 6 of Schedule 17 to the Environment Act 1995.

<sup>(21)</sup> [1974 c.40](#). Section 61 was amended by Schedule 7 to the Building Act 1984 ([c.55](#)), paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.



## PART 3

### Streets

#### Street works

**8.—(1)** The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus under the street;
- (d) maintain apparatus under the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

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

(3) Sections 54 to 106 of the 1991 Act<sup>(22)</sup> apply to any street works carried out under paragraph (1).

(4) In this article, “apparatus” has the same meaning as in Part 3 of the 1991 Act<sup>(23)</sup> (street works in England and Wales).

#### Temporary stopping up of streets

**9.—(1)** Subject to paragraph (4), the undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (2), prevent persons from passing along the street.

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

(3) Without limiting paragraph (1), the undertaker may—

- (a) temporarily stop up, alter or divert the streets specified in column (2) of Schedule 3 (streets to be temporarily stopped up); and
- (b) temporarily stop up, alter or divert—
  - (i) any footpath specified in column (2) of Schedule 3 to the extent of the diversion zone for that footpath shown on the public rights of way plans;
  - (ii) any diverted footpath to the extent of the diversion zone agreed with the highway authority.

(4) The undertaker must not temporarily stop up, alter or divert—

- (a) any street referred to in paragraph (3) without notifying the relevant planning authority and the highway authority;

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<sup>(22)</sup> A number of these provisions have been amended, including by the Traffic Management Act 2004 (c.18).

<sup>(23)</sup> “Apparatus” is defined in section 105(1).

(b) any other street without the consent of the highway authority, which may attach reasonable conditions to any consent (such consent not to be unreasonably withheld or delayed).

(5) Except as agreed in advance by the relevant planning authority, any notification under paragraph (4)(a) must be made at least 14 days before the temporary stopping up, alteration or diversion takes place.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(7) In this article, “diverted footpath” means a footpath identified in column (2) of Schedule 3 that has been diverted by the highway authority before commencement of the onshore works.

### **Access to works and temporary highways alterations**

**10.** The undertaker may, for the purposes of the authorised project,—

- (a) form and lay out a means of access, or improve an existing means of access, in the locations specified in column (2) of Schedule 4 (access to works);
- (b) after consultation with the highway authority and with the approval of the relevant planning authority, form and lay out such other means of access, or improve an existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project; and
- (c) after consultation with the highway authority and with the approval of the relevant planning authority, carry out the temporary highways alterations.

### **Agreements with a highway authority**

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

- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in article 8(1) (street works).

(2) An agreement referred to in paragraph (1) may, without limiting that paragraph,—

- (a) provide for the highway authority to carry out any function under this Order which relates to the street in question;
- (b) include an agreement between the undertaker and highway 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**

**12.—**(1) 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 project 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, subject to the obtaining of consent and approval under paragraphs (3) and (4) respectively.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991(24)(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 the person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to any public sewer or drain under paragraph (1) except—

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

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

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

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

(8) If a person who receives an application for consent under paragraph (3) or for approval under paragraph (4)(a) fails to notify the undertaker of a decision within 28 days of receiving the application, the person is deemed to have granted consent or given approval, as the case may be.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker(25), the Environment Agency, an internal drainage board or a local authority; and
- (b) except as provided in article 2 (interpretation), other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

### **Authority to survey and investigate land**

**13.**—(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 project and—

- (a) survey or investigate the land;
- (b) without limiting 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 limiting sub-paragraph (a), carry out ecological or archaeological investigations on the 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) Paragraph (1) does not authorise the undertaker to carry out any of the actions listed in sub-paragraphs (a) to (d) on any land seaward of MHWS.

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(24) 1991 c.56. Section 106 was amended by sections 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99 of the Water Act 2003 (c.37). The section is amended by paragraph 16(2) of Schedule 3 to the Flood and Water Management Act 2010 (c.29) from a date to be appointed.

(25) “Sewerage undertaker” is defined in Schedule 1 to the Interpretation Act 1978 (c.30).

(3) 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.

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

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

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

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

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

(b) in a private street without the consent of the street authority.

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

(7) If either a highway authority or street authority which receives an application for consent—

(a) under paragraph (5)(a), in the case of a highway authority; or

(b) under paragraph (5)(b), in the case of a street authority,

fails to notify the undertaker of its decision within 28 days of receiving the consent, the authority is deemed to have given consent.

### **Removal of human remains**

14.—(1) In this article, “specified land” means the land within the limits of deviation.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land, it must remove the human remains from the specified land, or cause them to be removed, in accordance with the following provisions of this article.

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

(a) publishing a notice in each of 2 successive weeks in a newspaper circulating in the area of the authorised project; and

(b) displaying a notice in a conspicuous place on or near to the specified land.

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

(5) At any time within 56 days after the first publication of a notice under paragraph (3), any person who is a personal representative or relative of any deceased person whose remains are interred in the specified land may give notice in writing to the undertaker of that person's intention to undertake the removal of the remains.

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

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

(b) removed to, and cremated in, any crematorium,

and that person must, as soon as reasonably practicable after the re-internment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

(7) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question must be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph is given to the undertaker in respect of any remains in the specified land;
- (b) notice under paragraph (5) is given and no application is made under paragraph (7) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days;
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which a notice under paragraph (5) relates cannot be identified,

subject to paragraph (10), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

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

- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar-General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record referred to in paragraph (9) must be sent by the undertaker to the relevant planning authority referred to in paragraph (4).

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

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

(14) Section 25 of the Burial Act 1857(26) (offence of removal of body from burial ground) does not apply to a removal carried out in accordance with this article.

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(26) 1857 c.81. Section 25 was substituted by section 2 of the Church of England (Miscellaneous Provisions) Measure 2014 (2014 No. 1).

## PART 5

### Powers of acquisition

#### Compulsory acquisition of land

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

(2) This article is subject to—

- (a) article 17 (time limit for exercise of authority to acquire land compulsorily);
- (b) article 18(2) (compulsory acquisition of rights);
- (c) article 24(9) (temporary use of land for carrying out authorised project); and
- (d) article 40 (Crown rights).

(3) From the day on which a compulsory acquisition notice under section 134 of the 2008 Act(27) is served or the day on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, the land or that part of it that is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

#### Compulsory acquisition of land: minerals

**16.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 (minerals) are incorporated in this Order, subject to the following modifications—

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

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

**17.**—(1) After 4th September 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(28) as applied by article 20 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 24 ceases at the end of 4th September 2021, except that nothing in this paragraph prevents the undertaker remaining in possession of land after that date, if the land was entered, and possession taken, on or before 4th September 2021.

#### Compulsory acquisition of rights

**18.**—(1) Subject to paragraph (2), the undertaker may 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 15 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights, etc. may be acquired), the undertaker’s powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of such restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

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(27) Section 134 was amended by section 142 of, and Schedule 25 to, the Localism Act 2011.

(28) 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).

(3) Subject to section 8 of the 1965 Act (other provisions as to divided land) as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 6 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 article of a right over land by the creation of a new right or the imposition of restrictive covenants.

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

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

### **Private rights**

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

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

whichever is the 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 this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or restrictive covenant—

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker which, being within the limits of land which may be acquired shown on the land plans, is required for the purposes of this Order are extinguished on the appropriation of the land by the undertaker for any of those purposes.

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

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act<sup>(29)</sup> to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act<sup>(30)</sup> (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 27 (statutory undertakers) applies.

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<sup>(29)</sup> Section 152 was amended by S.I. 2009/1307.

<sup>(30)</sup> Section 138 was amended by section 23(4) of the Growth and Industry Act 2013.



- (7) Paragraphs (1) to (4) have effect subject to—
- (a) any notice given by the undertaker before—
- (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker’s appropriation of the land;
  - (iii) the undertaker’s entry onto 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.
- (8) If any agreement referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(9) References in this article to private rights over land include references to any trusts or incidents to which the land is subject.

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

**20.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order and as if the undertaker were a public authority under section 1(2) of that Act.

- (2) The 1981 Act, as so applied, 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 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 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 purpose 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 the 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>(31)</sup> to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

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

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

(3) Paragraph (2) does not prevent article 23 (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.

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

**22.**—(1) The undertaker may enter on 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 project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

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

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

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

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

- (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.

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

**23.**—(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.

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<sup>(31)</sup> Section 125 was amended by paragraph 17 of Schedule 16 to the Housing and Planning Act 2016.

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

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

(4) If a counter-notice is served within that period, the question whether the owner is required to 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 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) in the case of part of land consisting 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 is required to sell the land subject to the notice to treat.

(6) If on 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) in the case of part of land consisting 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 a reference the Tribunal determines that—

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

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

(8) If—

- (a) the undertaker agrees to take the land subject to the counter-notice; or
- (b) the Tribunal determines that—

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

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

(9) Where, by reason of a determination by the Tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, 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.

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

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

- (a) enter on and take temporary possession of—
  - (i) the land specified in column (2) 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; and
  - (ii) any other 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 or restrictive covenants only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct any permanent or temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access in connection with the authorised project; and
- (e) construct or carry out any works (including mitigation works or operations) or use the land for the purposes of the authorised project.

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

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

- (a) in the case of land specified in paragraph (1)(a)(i) above, after the end of the period of 1 year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 7; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of 1 year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land or has otherwise acquired the land subject to temporary possession.

(4) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(i), unless otherwise agreed by the owners of the land, the undertaker must remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) remove or reposition any apparatus belonging to statutory undertakers or any necessary mitigation works.

(5) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(ii), unless otherwise agreed by the owners of the land, the undertaker must either acquire the land referred to in paragraph (3)(b) or remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.

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

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

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) (but the undertaker is not precluded from carrying out a survey of that land under article 13 (authority to survey and investigate land)).

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

(11) Section 13 of the 1965 Act(32) (refusal to give possession to acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

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

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

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

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

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

(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.

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(32) 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).

(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 powers conferred by this article.

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

(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 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.

(11) In this article, "maintenance period", in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project first exports electricity to the national electricity transmission network.

### **Protective provisions**

26. Schedule 8 (protective provisions) has effect.

### **Statutory undertakers**

27.—(1) Subject to Schedule 8, the undertaker may—

- (a) exercise the powers conferred by articles 15 and 18 in relation to so much of any land referred to in those articles as belongs to statutory undertakers;
- (b) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order limits; and
- (c) extinguish the rights of, remove, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order limits.

(2) In this article, a reference to a statutory undertaker includes a reference to a public communications provider (as defined in article 29(4) (recovery of costs of new connections)).

### **No double recovery**

28. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

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

29.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 27, 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 27, 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 the person, in consequence of the removal, for the purpose of making the drain or sewer belonging to the person communicate with any other public sewer or with a private sewerage disposal plant.

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

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003<sup>(33)</sup>;

“public utility undertaker” has the same meaning as in the 1980 Act<sup>(34)</sup>.

### **Special category land**

**30.**—(1) On the exercise by the undertaker of the Order rights, so much of the special category land as is required for the purposes of the exercise of those rights is discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of the Order rights.

(2) In this article—

“Order rights” means rights exercisable over the special category land by the undertaker under article 18;

“special category land” means the land identified as such on the land plans and numbered 01/01 in the book of reference.

## **PART 6**

### **Miscellaneous and general**

#### **Deemed marine licence under Marine and Coastal Access Act 2009**

**31.** The marine licence set out in Schedule 9 is deemed to have been issued under Part 4 of the 2009 Act for the licensed marine activities specified in Part 1 of the licence and subject to the conditions specified in Part 2 of the licence.

#### **Application of landlord and tenant law**

**32.**—(1) This article applies to—

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

so far as the 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 the person’s use.

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<sup>(33)</sup> 2003 c.21.

<sup>(34)</sup> “Public utility undertaker” is defined in section 329.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants prejudices the operation of an 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 such an agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of the 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 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.

### **Operational land for purposes of Town and Country Planning Act 1990**

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

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

**34.**—(1) The undertaker may, for the purposes of the authorised project, remove any hedgerows within the Order limits, specified in Schedule 10 (removal of hedgerows) and identified on the hedgerow plans that may be required for the purposes of carrying out the authorised project.

(2) In paragraph (1), “hedgerow” has the same meaning as in the Hedgerows Regulations 1997<sup>(35)</sup>.

(3) The undertaker may fell or lop any tree or shrub within or overhanging the Order limits, or cut back its roots if it reasonably believes it to be necessary to do so, in order to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(4) In carrying out any activity authorised by paragraph (3)—

- (a) the undertaker must not do unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the activity; and
- (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) does not apply<sup>(36)</sup>.

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

(6) Any dispute as to a person’s entitlement to compensation under paragraph (4), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

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

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

- (a) the works plans (rev. C);
- (b) the Order limits plans (rev. C);

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<sup>(35)</sup> S.I. 1997/1160.

<sup>(36)</sup> Section 206(1) was amended by paragraph 11 of Schedule 8 to the Planning Act 2008.

- (c) the land plans (rev. C);
- (d) the book of reference (rev. D, dated 8th August 2016);
- (e) the environmental statement (rev. A);
- (f) the access to works and streets plans (rev. C);
- (g) the hedgerow plans (rev. C);
- (h) the public rights of way plans (rev. C);
- (i) the crossings schedule (rev. 4.0);
- (j) the design principles document (rev. A);
- (k) the outline code of construction practice (onshore) (rev. C) comprising—
  - (i) the outline construction method statement (rev. E);
  - (ii) the outline health and safety plan;
  - (iii) the outline noise and vibration management plan (rev. B);
  - (iv) the outline air quality management plan;
  - (v) the outline soil management plan (rev. E);
  - (vi) the outline artificial light emissions plan;
  - (vii) the outline site waste management plan;
  - (viii) the outline pollution prevention and emergency incident response plan (rev. C);
  - (ix) the outline construction environment management plan (rev. B);
  - (x) the outline communications plan (rev. B);
- (l) the outline landscape strategy and ecological management plan (rev. D);
- (m) the outline traffic management plan (rev. B);
- (n) the outline onshore written scheme of investigation (rev. B);
- (o) the outline offshore written scheme of investigation (rev. A);
- (p) the outline access management plan (rev. B);
- (q) the outline offshore operations and maintenance plan (rev. A),

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

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

### **Arbitration**

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

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

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

- (a) a guarantee approved by the Secretary of State 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 approved by the Secretary of State.



(2) The provisions are—

- (a) article 15 (compulsory acquisition of land);
- (b) article 16 (compulsory acquisition of land: minerals);
- (c) article 18 (compulsory acquisition of rights);
- (d) article 19 (private rights);
- (e) article 21 (acquisition of subsoil only);
- (f) article 22 (rights under or over streets);
- (g) article 24 (temporary use of land for carrying out authorised project);
- (h) article 25 (temporary use of land for maintaining authorised project); and
- (i) article 27 (statutory undertakers).

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

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

#### **Procedure regarding certain approvals, etc.**

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

(2) Schedule 11 (procedure for discharge of Requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the Requirements unless otherwise agreed in writing between the undertaker and the relevant planning authority.

#### **Saving provisions for Trinity House**

**39.** Nothing in this Order prejudices or derogates from any of the rights, duties or privileges of Trinity House.

#### **Crown rights**

**40.**—(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 to take, use, enter on or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) 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;
- (b) 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
- (c) 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.

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

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(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1)—

- (a) may be given unconditionally or subject to terms and conditions;
- (b) is deemed to have been given in writing where it is sent electronically.

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

5th September 2016