
STATUTORY INSTRUMENTS

2013 No. 1203

The Galloper Wind Farm Order 2013

Citation and commencement

1. This Order may be cited as the Galloper Wind Farm Order 2013 and shall come into force on 15th June 2013.

Interpretation

2.—(1) Except for Schedule 2 (Deemed Licence under the Marine and Coastal Access Act 2009), which is subject to the definitions in that Schedule, in this Order—

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

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

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

“the 1990 Act” means the Town and Country Planning Act 1990(4);

“the 1991 Act” means the New Roads and Street Works Act 1991(5);

“the 2004 Act” means the Energy Act 2004(6);

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- (1) 1961 c. 33. Section 2(2) was amended by section 193 of, and paragraph 5 of Schedule 33 to, the Local Government, Planning and Land Act 1980 (c. 65). There are other amendments to the 1961 Act which are not relevant to this Order.
- (2) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 (c. 34). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). There are other amendments to the 1965 Act which are not relevant to this Order.
- (3) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); section 1(2), (3) and (4) was amended by section 8 of, and paragraph 1 of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); section 1(3A) and (5) was inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraph 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 64(4) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (4) 1990 c. 8. Section 78 was extended by section 50(1) of the Planning and Compulsory Purchase Act 2004 (c. 5). There are other amendments to the 1990 Act which are not relevant to this Order. Section 262 has been amended by the Gas Act 1995 (c. 45), section 16(1) and Schedule 4, paragraph 18(2). There are other amendments not relevant to this Order.
- (5) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18). There are other amendments to the 1991 Act but they are not relevant to this Order.
- (6) 2004 c. 20.

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009(7);

“accommodation platform” means a platform housing or incorporating temporary accommodation including mess facilities, landing points for vessels and helicopters, standby electricity generation equipment, marking and lighting and other equipment and facilities to assist in the coordination of emergency marine activities related to the authorised development;

“ancillary works” means the ancillary works described in Part 2 of Schedule 1 (ancillary works) which are not development within the meaning of section 32 of the 2008 Act;

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

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

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

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

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

“collection platform” means a platform housing or incorporating electrical switchgear and/or electrical transformers, J-tubes, marking and lighting and other equipment and facilities to enable the electrical connection of electrical cables from multiple WTGs to be collected at, and exported from, the platform in one or more cables;

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

“the deemed Marine Licence” means the licence set out in Schedule 2 and deemed by article 10 to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“EDF Energy” means EDF Energy (UK) Limited (company number 02622406) and any group company of EDF Energy (UK) Limited which holds property and is a licensed holder for any of the purposes under section 6 of the Electricity Act 1989 at Sizewell, and for the purposes of this definition “group company” means any company which is a company within the meaning of section 42 of the Landlord and Tenant Act 1954 including EDF Energy Nuclear Generation Limited (company number 03076445) and NNB Generation Company Limited (company number 06937084);

“electric line” has the same meaning as in section 235 of the 2008 Act;

“electrical substation compound” means a compound containing electrical equipment including switchgear, transformers, reactive compensation equipment, harmonic filters, cables, control buildings, communications masts, back-up generators, access, fencing and other associated equipment or structures;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application on 21 November 2011 and the environmental information contained in the clarifications, corrections and omissions document accepted by the Examining authority as a late submission, together with the table of environmental mitigation measures in relation to protected species dated 16 July 2012 and the two tables of offshore and onshore environmental mitigation measures dated 16 July 2012 submitted to the Examining authority, as part of the examination of the application for this Order;

“examination” means the examination under Chapter 4 in Part 6 of the 2008 Act into the application for this Order;

“Examining authority” means the Examining authority appointed under Chapter 2 in Part 6 of the 2008 Act to examine the application for this Order;

“gravity base foundation” means a structure principally of concrete which rests on the seabed due to its own weight and that of added ballast, with or without additional drilled pins or other additional fixings, which may include an integrated transition piece, and associated equipment including J-tube and access platforms and equipment;

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

“the land plan” means the plan certified as the land plan by the Secretary of State for the purposes of this Order;

“maintain” includes maintain, upkeep, inspect, repair, adjust, alter, relay and remove and any derivative of “maintain” is to be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

“mean high water springs” or “MHWS” means the highest level which spring tides reach on average over a period of time;

“mean low water spring tides” or “MLWST” means the average of the low water heights occurring at the time of spring tides which is also the outermost extent of the local planning authority jurisdiction;

“meteorological mast” means a mast housing or incorporating equipment to measure wind speed and other wind characteristics, including a topside housing electrical switchgear and communication equipment and associated equipment, and marking and lighting;

“MMO” means the Marine Management Organisation;

“monopile foundation” means a metal pile, typically cylindrical, driven and/or drilled into the seabed and associated equipment including J-tube and access-related equipment;

“offshore substation platform” means a platform with one or more decks, whether open or fully clad, accommodating medium to high voltage electrical power transformers, medium and/or high voltage switch gear, helicopter landing facilities, re-fuelling facilities, portable water storage, black water separation equipment, instrumentation, metering equipment, control systems, standby electrical generation equipment, auxiliary and uninterruptible power supply systems, emergency accommodation including mess facilities, craneage, control hub, drainage facilities, access equipment, marking and lighting and other associated equipment and facilities;

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

“the Order limits” means the limits shown on the Order limits plan within which the authorised project may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 3 of Part 1 of Schedule 1 (authorised development) of this Order;

“Order limits plan” means the plan certified as the Order limits plan by the Secretary of State for the purposes of this Order;

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

“relevant planning authority” means Suffolk Coastal District Council;

(8) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

“Renewable Energy Zone” means the areas of the sea designated under the Renewable Energy Zone (Designation of Area) Order 2004(9);

“the Requirements” means the requirements set out in Part 3 of Schedule 1 (Requirements) to this Order;

“scheduled works” means the works numbered 1(a), 2, 3A, 3B, 4 to 7, 8A, 8B, 9A, 9B, 10 and 11 specified in Part 1 of Schedule 1 to this Order;

“space frame foundation” means a metal jacket/lattice-type structure, including between three to six legs, which is fixed to the seabed with driven piles and/or drilled pins and/or weights and/or suction cans or additional fixings, which may include an integrated transition piece, and associated equipment including J-tube and access platforms and equipment;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act (which make provision about orders affecting statutory undertakers’ land);

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

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

“suction can” means a steel open-based cylinder, which is fixed to the base of a foundation and is installed until the lid is flush with the seabed;

“suction monopod” means a tubular metal structure founded on a steel open based cylinder akin to an up-turned bucket which partially penetrates the seabed, which may include an integrated transition piece, and associated equipment, including J-tube and access platforms and equipment;

“territorial waters” means the territorial waters within section 1 of the Territorial Sea Act 1987(10);

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

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

“undertaker” means Galloper Wind Farm Limited;

“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;

“wind turbine generator” or “WTG” means a structure comprising a tower, rotor with three blades, nacelle and ancillary electrical and other equipment which may include J-tubes, transition piece, access and rest platforms, access ladders, boat access systems, corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation; and

“the works plan” means the plans certified as the works plan by the Secretary of State for the purposes of this Order.

(2) References in this Order to rights over land include references to rights to do or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) References in this Order to numbered Requirements are to the Requirements with those numbers in Part 3 of Schedule 1.

(4) In its application to the compulsory acquisition of land under this Order, by virtue of section 125 of the 2008 Act, Part 1 of the 1965 Act shall apply as if ‘land’ has the meaning given by section 159 of the 2008 Act.

(9) S.I. 2004/2668.

(10) 1987 c. 49.

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

(6) Any reference in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order.

(7) References in this Order to reference points identified by letters are to be construed as references to the points so lettered on the works plans.

Development consent etc. granted by the Order

3. Subject to the provisions of Part 3 of Schedule 1 (Requirements), Schedule 2 (deemed marine licence) and the other provisions of this Order, 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.

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. No maintenance works whose likely significant effects on the environment are not described in the environmental statement shall take place except with the prior written consent, and subject to such further environmental assessment, as the MMO may require.

Operation of an offshore electricity generating station and keeping of overhead lines

5.—(1) The undertaker is hereby authorised to operate the offshore electricity generating station comprised in the authorised development.

(2) The undertaker is hereby authorised to keep the overhead lines above ground which are comprised in the authorised development.

(3) This article does not relieve the undertaker of any requirement to obtain any permit or licence under any other legislation that may be required from time to time to authorise the operation of an offshore electricity generating station or the keeping of an electric line above ground.

Requirements, appeals, etc.

6.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by Requirements 19 to 36 (inclusive) (Requirements that relate to land above mean low water spring tides), the following provisions apply in respect of that application as they would if the consent, agreement or approval so required was required by a condition imposed on the grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to a consent, agreement or approval of a local planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989⁽¹¹⁾.

(11) 1989 c. 29.

Benefit of the Order

7.—(1) Subject to paragraphs (2) and (3), the undertaker may, with the written consent of the Secretary of State—

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

(2) The Secretary of State shall consult the MMO before giving consent to the transfer to another person of any or all of the benefit of the provisions of the deemed Marine Licence.

(3) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (4), shall include references to the transferee or lessee.

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

Public rights of navigation

8.—(1) Subject to paragraphs (2) and (3), the rights of navigation over the places in the sea within territorial waters where any of the wind turbine generators, meteorological masts, offshore substation platforms, accommodation platforms and collection platforms (“the Installations”), including their foundations, comprising part of the authorised development is located (“the relevant rights of navigation”), shall be extinguished.

(2) The extinguishment of the relevant rights of navigation identified in paragraph (1) shall take effect 14 days after the undertaker has submitted a plan to the Secretary of State, Trinity House, the MCA and the MMO showing the precise locations of the foundations of each of the Installations to be constructed as part of the authorised development.

(3) The plan submitted in accordance with paragraph (2) shall be published by the undertaker in such form and manner as required by the Secretary of State.

Abatement of works abandoned or decayed

9. Where Work No. 1 or any part of it, is abandoned or allowed to fall into decay the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore Work No. 1 or any part, or to remove it and, without prejudice to any notice served under section 105(2) of the 2004 Act, restore the site to its former condition, to such an extent and within such limits as the Secretary of State thinks proper.

Deemed licence under the Marine and Coastal Access Act 2009

10. The undertaker is granted a deemed licence under Part 4 Chapter 1 of the 2009 Act to carry out the works and make the deposits specified in Part 1 of Schedule 2, subject to the licence conditions set out in Part 2 of that Schedule.

Saving for Trinity House

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

Crown rights

12.—(1) Nothing in this Order shall—

- (a) prejudicially affect any estate, right, power, privilege, authority or exemption of the Crown; or
- (b) authorise the undertaker to take, use, enter upon or in any manner interfere with any land, hereditaments or rights of whatever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary) belonging to—
 - (i) Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners without the consent in writing of those Commissioners; or
 - (ii) a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) A consent under paragraph (1)(b) may be given unconditionally or may be subject to such conditions or upon such terms as may be considered necessary or appropriate.

Street works

13.—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 3 (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, or bore under the street;
- (b) place apparatus under the street;
- (c) maintain apparatus under the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

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

(3) The provisions of sections 54 to 106 of the 1991 Act 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.

Agreements with street authorities

14.—(1) A street authority and the undertaker may enter into agreements with respect to the carrying out in the street of any of the works referred to in article 13(1) (street works).

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

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

Authority to survey and investigate the land

15.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

- (a) survey or investigate the land;
 - (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
 - (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) shall, if so required entering the land, produce written evidence of their authority to do so; and
 - (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes shall be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority,
- but such consent shall not be unreasonably withheld.
- (5) The undertaker shall 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, Part 1 (determination of questions of disputed compensation) of the 1961 Act.

Compulsory acquisition of land

- 16.**—(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 article 18 (compulsory acquisition of rights) and article 23 (temporary use of land for carrying out the authorised project).

Time limit for exercise of authority to acquire land compulsorily

- 17.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—
- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
 - (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981⁽¹²⁾ as applied by article 20 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

⁽¹²⁾ 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are other amendments to the 1981 Act which are not relevant to this Order.

(2) The authority conferred by article 23 (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

18.—(1) Subject to paragraph (2) the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 16 (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 4 (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 as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act where the undertaker acquires a right over land under paragraph (1) or (2) the undertaker shall not be required to acquire a greater interest in that land.

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

(5) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (4) shall be 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 shall be 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 under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of the acquisition of the right by the undertaker, whether 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 plan, are required for the purposes of this Order shall be 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 shall be 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 shall be entitled to compensation in accordance with the terms of section 152 of the 2008 Act 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 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 26 (statutory undertakers) applies.

(7) Paragraphs (1) to (3) shall 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 shall not apply to any right specified in the notice; and

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

(8) If any such agreement as is 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 shall be 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 includes reference to any trusts or incidents to which the land is subject.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

20.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

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

(a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated.

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

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

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

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

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

(a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and

(b) subsection (2) shall be omitted.

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 shall be construed as references to that Act as applied by section 125 of the 2008 Act 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 paragraph (1) of article 16 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

Rights under or over streets

22.—(1) The undertaker may enter on and appropriate so much of the subsoil of any street within the Order land as may be required for the purposes of the authorised project and may use the subsoil 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) shall not apply in relation to—

(a) any subway or underground building; or

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

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

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

Temporary use of land for carrying out the authorised project

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

(a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 5 (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;

(b) remove any buildings and vegetation from that land; and

- (c) construct temporary works (including the provision of means of access) and buildings on that land.
- (2) In the case of the land numbered 141, 142, 143, 161, 163, 165, 167, 170 and 171 in column (2) of Schedule 5, the power conferred by paragraph (1) shall be limited to entering in and taking temporary possession of the airspace over the land for the purpose specified in relation to that land in column (3) of that Schedule.
- (3) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 5.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.
- (6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article shall affect 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) except that the undertaker shall not be precluded from—
- (a) acquiring new rights over any part of that land under article 18 (compulsory acquisition of rights); or
 - (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 21 (acquisition of subsoil only).
- (10) In relation to the land specified in paragraph (2), the powers conferred by paragraph (9), shall be limited to the airspace over the land and that paragraph shall not authorise the undertaker to acquire any part of the subsoil or rights in the subsoil of that land.
- (11) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.
- (12) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised project

- 24.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—
- (a) enter on and take temporary possession of any land within the Order land 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 Order land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) shall 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 shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (7) Any dispute as to a person’s entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).
- (11) In this article “the maintenance period”, in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project is first opened for use.

For the protection of specified undertakers

- 25. Schedule 6 has effect.

Statutory undertakers

- 26. Subject to the provisions of Schedule 6 (for the protection of specified undertakers), the undertaker may—
 - (a) acquire compulsorily or acquire new rights over the land belonging to statutory undertakers shown on the land plan within the limits of the land to be acquired and described in the book of reference;
 - (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Recovery of costs of new connections

27.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 26 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 26, any person who is—

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

shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(13); and

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

Application of landlord and tenant law

28.—(1) This article applies to—

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

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants shall prejudice the operation of any agreement to which this article applies.

(3) Accordingly, no such enactment or rule of law shall apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Operational land for purposes of the 1990 Act

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

Certification of plans etc.

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

- (a) the Order limits plans Number 2.1 Rev 3 (1 of 2) as submitted in the application for this Order and 2.2 Rev 4 (2 of 2) submitted to the Examining authority in connection with the examination of the application for this Order;
- (b) the consolidated book of reference dated 22 October 2012 and submitted to the Examining authority in connection with the examination of the application for this Order;
- (c) the land plans—
 - Number 2.5 Rev 20 (1 of 2) dated 7 June 2012 submitted to the Examining authority in connection with the examination of the application for this Order; and
 - Number 2.6 Rev 6 (2 of 2) as submitted in the application for this Order;
- (d) the onshore works plan Number 2.3 Rev 1 dated 6 November 2012 submitted to the Examining authority in connection with the examination of the application for this Order; and
- (e) the offshore works plans Number—
 - C2.4_A Rev1;
 - C2.4-1 Rev4;
 - C2.4-2 Rev3;
 - C2.4-3 Rev2;
 - C2.4-4 Rev2;
 - C2.4-5 Rev2;
 - C2.4-6 Rev2;
 - C2.4-7 Rev2;
 - C2.4-8 Rev2;
 - C2.4-9 Rev2;
 - C2.4-10 Rev2;
 - C2.4-11 Rev1;
 - C2.4-12 Rev2;
 - C2.4-13 Rev2;
 - C2.4-14 Rev2;
 - C2.4-15 Rev2;
 - C2.4-16 Rev2;
 - C2.4-17 Rev2;
 - C2.4-18 Rev2;
 - C2.4-19 Rev2;
 - C2.4-20 Rev1;

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

C2.4-21 Rev2;
C2.4-22 Rev2;
C2.4-23 Rev2;
C2.4-24 Rev2;
C2.4-25 Rev2;
C2.4-26 Rev2;
C2.4-27 Rev2;
C2.4-28 Rev2;
C2.4-29 Rev2;
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C2.4-74 Rev1;
C2.4-75 Rev1;
C2.4-76 Rev1;
C2.4-77 Rev1;
C2.4-78 Rev1;
C2.4-79 Rev1;

(f) other plans referred to in this Order—

Number 2.7 Rev 40 (Onshore General Arrangement) dated 13 November 2012 submitted to the Examining authority in connection with the Examination of the application for this Order;

Number 2.8 Rev 6 (Height Restrictions Plan) as submitted with the application for this Order;

Number 2.9 Rev 1 (Onshore Connection and Transmission Works – General Arrangement) dated 10 November 2012 submitted to the Examining authority in connection with the examination of the application for this Order;

Number 2.10 Rev 2 (Transmission Compound – General Arrangement and Elevations) dated 16 July 2012 submitted to the Examining authority in connection with the examination of the application for this Order;

Number 2.21 Rev 4 (Extinguishment of Rights of Navigation Plan) as submitted in the application for this Order;

Number GWF 888 R3 Rev 3 (BEEMS-MS0345 (Sizewell C Protective Provisions Plan)) dated 29 October 2012 submitted to the Examining authority in connection with the examination of the application for this Order;

Number GWF 890 R3 Rev 3 (BEEMS-MS0357A (Sizewell B Quality of Cooling Water Intake Plan)) dated 29 October 2012 submitted to the Examining authority in connection with the examination of the application for this Order; and

Number GWF 887 R3 Rev 3 (BEEMS-MS0359A (Sizewell B Buffer Zone Plan)) dated 29 October 2012 submitted to the Examining authority in connection with the examination of the application for this Order;

- (g) other documents referred to in this Order—
- (i) the draft Construction Code of Practice dated 29 October 2012 submitted to the Examining authority in connection with the examination of the application for this Order;
 - (ii) the environmental statement submitted with the application for this Order and the environmental information contained in the clarifications, corrections and omissions document accepted by the Examining authority as a late submission, together with the table of environmental mitigation measures in relation to protected species dated 16 July 2012 and the two tables of offshore and onshore environmental mitigation measures dated 16 July 2012 submitted to the Examining authority as part of the examination of the application for this Order;
 - (iii) the design and access statement as submitted in the application for this Order; and
 - (iv) the landscape strategy as submitted in the application for this Order,

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

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

Arbitration

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

Signed by authority of the Secretary of State for Energy and Climate Change

24th May 2013

Giles Scott
Head of National Infrastructure Consents
Department of Energy and Climate Change