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STATUTORY INSTRUMENTS

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**2014 No. 1599**

**The East Anglia ONE Offshore Wind Farm Order 2014**

**PART 1**

**Preliminary**

**Citation and commencement**

1. This Order may be cited as the East Anglia ONE Offshore Wind Farm Order 2014 and shall come into force on 7th July 2014.

**Interpretation**

2.—(1) 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 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);

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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.150). 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); sections 1(2), 1(3) and 1(4) were 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); sections 1(3A) and 1(5) were 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 paragraphs 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 1992 (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 65(5) 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) 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

- “the 1990 Act” means the Town and Country Planning Act 1990(5);
- “the 1991 Act” means the New Roads and Street Works Act 1991(6);
- “the 2004 Act” means the Energy Act 2004(7);
- “the 2008 Act” means the Planning Act 2008(8);
- “the 2009 Act” means the Marine and Coastal Access Act 2009(9);
- “ancillary works” means the ancillary works described in Part 2 of Schedule 1 (ancillary works) and any other works authorised by this Order and which 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, which 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;
- “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;
- “CAA” means the Civil Aviation Authority constituted by the Civil Aviation Act 1982;
- “cable” in respect of any onshore cable shall include direct lay cables and/or cables laid in cable ducts and in respect of any cable whether onshore or offshore shall include fibre optic cables either within the cable or laid alongside;
- “cable crossings” means the crossing of existing sub-sea cables by the inter-array, interconnecting and/or export cables authorised by this Order together with physical protection measures including concrete mattresses and/or rock placement;
- “cable ducts” means conduits for the installation of cables;
- “carriageway” has the same meaning as in the 1980 Act;
- “commencement” means, in relation to the authorised project seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for pre-construction surveys and monitoring and, in respect of any other part of the authorised project, beginning to carry out any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary

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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 amendments to the 1981 Act which are not relevant to this Order.
- (5) 1990 c.8. Section 78 was extended by section 50(1) of the Planning and Compulsory Purchase Act 2004 (c.5). Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c.34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act 2003 (c.21). Sections 272 to 274 were amended by S.I. 2011/741 and S.I. 2012/2590. There are amendments to the 1990 Act which are not relevant to this Order.
- (6) 1991 c.22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c.26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).
- (7) 2004 c.20. Section 105 was amended by section 69 of the Energy Act 2008 (c.32).
- (8) 2008 c.29. The relevant provisions of the Planning Act 2008 are amended by Chapter 6 of Part 6 of, and Schedule 13 to, the Localism Act 2011 (c.20), and by sections 22 to 27 of the Growth and Infrastructure Act 2013 (c.27). Section 149A was inserted by paragraph 4 in Part 1 of Schedule 8 to the Marine and Coastal Access Act 2009 (c. 23).
- (9) 2009 c.23.

means of enclosure, the temporary display of site notices or advertisements and the words “commence” and “commenced” shall be construed accordingly;

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

“connection works” means Works No. 3B to 41 and any related further associated development in connection with those works, including, in relation to cable laying, jointing bays, manholes, kiosks, marker posts and other works associated with cable laying;

“construction consolidation site” means a construction site associated with the connection 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;

“deemed generation assets marine licence” means the licence set out in Schedule 9 (deemed licence under the Marine and Coastal Access Act 2009 – generation assets) and deemed by article 28 to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“deemed marine licences” means the licence set out in Schedule 9 (deemed licence under the Marine and Coastal Access Act 2009 – generation assets) and the licence set out in Schedule 10 (deemed licence under the Marine and Coastal Access Act 2009 – transmission assets);

“deemed transmission assets marine licence” means the licence set out in Schedule 10 (deemed licence under the Marine and Coastal Access Act 2009 – transmission assets) and deemed by article 28 to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands, B75 7RL and any successor body to its functions;

“draft written scheme of investigation: archaeology and cultural heritage (offshore)” means the document certified as the draft written scheme of investigation: archaeology and cultural heritage (offshore) by the Secretary of State for the purposes of this Order;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted in support of the application;

“further environmental information” means the document certified as the further environmental information by the Secretary of State for the purposes of this Order and submitted in support of the application;

“gravity base foundation” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platforms and equipment;

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

“horizontal directional drilling” includes, for the purposes of this Order, non-trenchless techniques for laying the onshore cables;

“horizontal directional drilling compound” means a construction site associated with the connection works where horizontal directional drilling is proposed 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, wheel washing facilities, workshop facilities and temporary

fencing or other means of enclosure and areas for other facilities required for construction purposes;

“HVAC offshore collector station” means a platform with one or more decks, whether open or fully clad, accommodating electrical power transformers, low, medium and/or high voltage switch gear, instrumentation, protection and control systems, neutral earthing resistors, reactive compensation, standby electrical generation equipment, fuelling facilities, auxiliary and uninterruptible power supply systems and transformers, accommodation and/or emergency shelter, craneage, metering stations, meteorological equipment, helicopter landing facilities, messing facilities, potable water storage, black water separation equipment, control hub, drainage facilities, access equipment, J-tubes, marking and lighting and other associated equipment and facilities to enable the transmission of electronic communications and for electricity to be collected at, and exported from, the platform;

“HVDC offshore converter station” means a platform with one or more decks, whether open or fully clad, accommodating electrical power transformers, AC equipment including phase reactors and AC filters, AC/DC converter with switching devices, DC equipment including DC capacitors and DC filters and associated equipment, switch gear, cooling systems, instrumentation, protection and control systems, standby electrical generation equipment, fuelling facilities, auxiliary and uninterruptible power supply systems and transformers, accommodation and/or emergency shelter, craneage, meteorological equipment, helicopter landing facilities, messing facilities, potable water storage, black water separation equipment, control hub, drainage facilities, access equipment, J-tubes, marking and lighting and other associated equipment and facilities to enable the transmission of electronic communication and the conversion and transmission of electricity;

“jacket foundation” means a steel jacket/lattice-type structure constructed of steel which is fixed to the seabed at two or more points with steel pin piles or steel suction buckets and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment, and “discrete jacket foundation types” shall include pre-piled or post-piled jackets, three-legged or four legged jackets, or straight or battered leg jackets;

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

“LAT” means lowest astronomical tide;

“licensed marine activities” means the activities specified in Part 1 of the deemed Marine Licences;

“maintain” includes inspect, maintain, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works in Part 2 of Schedule 1 (Ancillary Works) and any component part of any wind turbine generator, offshore substation or meteorological mast described in Part 1 of Schedule 1 (Authorised Development) (but not including the alteration, removal or replacement of foundations) to the extent assessed in the environmental statement; and “maintenance” shall be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

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

“mean low water” or “MLW” means the average height of all low waters above Chart Datum;

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

“MMO” means the Marine Management Organisation;

“monopile foundation” means a steel pile, typically cylindrical, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“offshore substation” means a HVAC collector station or a HVDC converter station;

“onshore converter station” means onshore converter(s) housed within one or more converter halls and a compound containing electrical equipment including power transformers, switchgear, reactive compensation equipment, harmonic filters, cables, lightning protection masts, control buildings, communications masts, back-up generators, access, fencing and other associated equipment, structures or buildings;

“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;

“Order limits” means the limits shown on the works plan within which the authorised project may be carried out, whose grid coordinates seaward of MHWS are set out in paragraph 2 of Part 1 of Schedule 1 and whose grid coordinates landward of MLW are set out in paragraph 3 of Part 1 of Schedule 1;

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

“outline access management plan” means the document certified as the outline access management plan by the Secretary of State for the purposes of this Order;

“outline Bawdsey bed level monitoring and remediation strategy” means the document certified as the outline Bawdsey bed level monitoring and remediation strategy by the Secretary of State for the purposes of this Order;

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of this Order;

“outline converter station design principles statement” means the document certified as the outline converter station design principles statement by the Secretary of State for the purposes of this Order;

“outline landscape and ecological management strategy” means the document certified as the outline landscape and ecological management strategy by the Secretary of State for the purposes of this Order;

“outline navigation monitoring strategy” means the document certified as the outline navigation monitoring strategy by the Secretary of State for the purposes of this Order;

“outline offshore operations and maintenance and monitoring plan” means the document certified as the outline offshore operations and maintenance and monitoring plan by the Secretary of State for the purposes of this Order;

“outline skills strategy” means the document certified as the outline skills strategy by the Secretary of State for the purposes of this Order;

“outline traffic management plan” means the document certified as the outline traffic management plan by the Secretary of State for the purposes of this Order;

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

“outline written scheme of investigation: archaeology and cultural heritage (onshore)” means the document certified as the outline written scheme of investigation: archaeology and cultural heritage (onshore) 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<sup>(10)</sup>;

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed for fixity of steel jacket foundations;

“primary construction consolidation site” means a construction consolidation whose footprint does not exceed the dimensions specified in requirement 10(9)(a);

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

“relevant planning authority” means the district planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

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

“secondary construction consolidation site” means a construction consolidation whose footprint does not exceed the dimensions specified in requirement 10(9)(b);

“statutory undertakers” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

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

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

“suction buckets” means large diameter steel cylindrical shells which penetrate the seabed assisted by hydrostatic pressure differential for fixity of steel jacket foundations;

“suction caisson foundation” means a tubular steel structure which penetrates the seabed assisted by a hydrostatic pressure differential and associated equipment, including scour protection, J-tubes, corrosion protection systems and access platform and equipment;

“transition cable jointing bay” means an underground pit where the offshore export cables comprised in Work No. 3A are jointed to the connection works;

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

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

“undertakers” means East Anglia ONE 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;

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

“wind turbine generator” or “WTG” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), 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

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

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(10) 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.

(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, save in respect of the parameters referred to Requirements 3 to 7 and 10 in Part 3, Schedule 1 (Requirements), conditions 1 to 5 in Part 2, Schedule 9 (deemed licence under the Marine and Coastal Access Act 2009 – Generation Assets) and conditions 2 to 5 in Part 2, Schedule 10 (deemed licence under the Marine and Coastal Access Act 2009 – Transmission Assets).

(4) 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.

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

(6) The expression “includes” shall be construed without limitation.

## PART 2

### Principal powers

#### **Development consent etc. granted by the Order**

3.—(1) Subject to the provisions of this Order and to the Requirements the undertakers 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) Subject to the Requirements, Works No. 1 to 3A shall be constructed anywhere within the Order limits seaward of mean high water springs and Works No. 3B to 41 shall be constructed anywhere within the Order limits landward of mean low water.

#### **Power to construct and maintain authorised project**

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

#### **Benefit of the Order**

5.—(1) Subject to paragraphs (2) and (3), the undertakers 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 (excluding the deemed marine licences referred to in (2) below) and such related statutory rights as may be agreed between the undertakers and the transferee;
- (b) grant to another person (“the lessee”) for a period agreed between the undertakers and the lessee any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in (2) below) and such related statutory rights as may be so agreed.

(2) The undertakers may with the written consent of the Secretary of State—

- (a) where an agreement has been made in accordance with paragraph 5(a), transfer to the transferee the whole of the deemed generation assets marine licence and/or the whole of

the deemed transmission assets marine licence and such related statutory rights as may be agreed between the undertakers and the transferee; or

- (b) where an agreement has been made in accordance with paragraph 5(b), grant to the lessee the whole of the deemed generation assets marine licence and/or the whole of the deemed transmission assets marine licence and such related statutory rights as may be so agreed.
- (3) The Secretary of State shall consult the MMO before giving consent to the transfer or grant to another person of the whole of the benefit of the provisions of the deemed marine licences.
- (4) Where paragraph (7) applies no consent of the Secretary of State shall be required.
- (5) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertakers, except in paragraph (8), shall include references to the transferee or lessee.
- (6) 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 undertakers.
- (7) Where an agreement has been made in accordance with paragraph (1)—
- (a) the benefit (“the transferred benefit”) shall include any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates;
  - (b) the transferred benefit shall reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit shall not be enforceable against the undertakers save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertakers which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertakers on behalf of the transferee.
- (8) This paragraph applies where—
- (a) the transferee or lessee is a person who holds a licence under the Electricity Act 1989; or
  - (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
    - (i) no such claims have been made;
    - (ii) any such claim has been made and has been compromised or withdrawn;
    - (iii) compensation has been paid in final settlement of any such claim;
    - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
    - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation shall be payable.
- (9) The provisions of article 8 (street works), article 10 (temporary stopping up of streets), article 15 (compulsory acquisition of land), article 17 (compulsory acquisition of rights), article 23 (temporary use of land for carrying out the authorised project) and article 24 (temporary use of land for maintaining the authorised project) shall have effect only for the benefit of the named undertakers and a person who is a transferee or lessee and is also—
- (a) in respect of Works No. 3B to 41 a person who holds a licence under the Electricity Act 1989; or
  - (b) in respect of functions under article 8 (street works) relating to a street, a street authority.
- (10) Where paragraph (8) applies the undertakers shall provide written notification to the Secretary of State prior to transferring and/or granting any benefit under paragraph (1).

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

6. Regulation 6 of the Hedgerows Regulations 1997<sup>(11)</sup> shall be modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

- “(k) or for carrying out development which has been authorised by development consent made pursuant to the Planning Act 2008.”.

### **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>(12)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
- (i) relates to premises used by the undertakers for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance 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) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974<sup>(13)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
- (i) relates to premises used by the undertakers for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with requirement 24 (control of noise during operational phase); or
  - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do not apply where the consent relates to the use of premises by the undertakers for purposes of or in connection with the construction or maintenance of the authorised project.

## **PART 3**

### **Streets**

#### **Street works**

8.—(1) The undertakers 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—

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<sup>(11)</sup> S.I. 1997/1160.

<sup>(12)</sup> 1990 c.43. There are amendments to this Act which are not relevant to this Order.

<sup>(13)</sup> 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to the 1974 Act which are not relevant to this Order.

- (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), (b), (c) and (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) 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.

### **Temporary stopping up of public rights of way**

9.—(1) Subject to the provisions of this article, the undertakers may, in connection with the carrying out of the authorised project temporarily stop up each of the public rights of way specified in columns (2) to (3) of Schedule 3 (public rights of way to be temporarily stopped up) to the extent specified in column (4), by reference to the letters and numbers shown on the public rights of way plan.

(2) The public rights of way specified in Part 1 of Schedule 3 (public rights of way to be temporarily stopped up) shall not be temporarily stopped up under this article unless the diversion route specified on the public rights of way plan is first provided by the undertakers, to the reasonable satisfaction of the relevant highway authority.

(3) The relevant diversion route provided under paragraph (2) shall be subsequently maintained by the undertakers until the re-opening of the relevant public right of way specified in paragraph (1).

### **Temporary stopping up of streets**

10.—(1) Subject to paragraph (4), the undertakers, 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 all persons from passing along the street.

(2) The undertakers shall 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 prejudice to the generality of paragraph (1) the undertakers may temporarily stop up, alter or divert the streets specified in column (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the public rights of way plan, in column (4) of that Schedule.

(4) The undertakers shall not temporarily stop up, alter or divert—

- (a) any street without the consent of the street authority which may attach reasonable conditions to any consent; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.

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

### **Access to works**

- 11.** The undertakers may, for the purposes of the authorised project—
- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 5 (access to works); and
  - (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertakers reasonably requires for the purposes of the authorised project.

### **Agreements with street authorities**

- 12.—**(1) A street authority and the undertakers 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) 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 undertakers and street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

## **PART 4**

### **Supplemental powers**

#### **Discharge of water**

**13.—**(1) The undertakers 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 respectively pursuant to paragraphs (3) and (4).

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertakers pursuant to paragraph (1) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(14) (right to communicate with public sewers).

(3) The undertakers shall not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but shall not be unreasonably withheld.

(4) The undertakers shall not carry out any works to any public sewer or drain pursuant to article 13(1) except—

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(14) 1991 c.56. Section 106 was amended by sections 36(2) and 99 of the Water Act 2003 (c.37), and amended by sections 32 and 42 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010 (date in force to be appointed see section 49(3)(h)(i)). There are other amendments to this section which are not relevant to this Order.

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval shall not be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.
- (5) The undertakers shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.
- (6) The undertakers shall take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain pursuant to this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.
- (7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010<sup>(15)</sup>.
- (8) In this article—
- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertakers, the Environment Agency, an internal drainage board or a local authority; and
  - (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991, as amended by the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in that Act.

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

- 14.—(1) The undertakers 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 prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertakers 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 undertakers—
- (a) shall, if so required on 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 forming a railway without the consent of Network Rail Infrastructure Limited; or
  - (b) in land held by or in right of the Crown without the consent of the Crown.
- (5) No trial holes shall be made under this article—

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<sup>(15)</sup> S.I. 2010/675, as amended by the Environmental Permitting (England and Wales) (Amendment) Regulations 2011 (S.I. 2011/2043), the Environmental Permitting (England and Wales) (Amendment No. 2) Regulations 2011 (S.I. 2011/2933), the Environmental Permitting (England and Wales) (Amendment) Regulations 2012 (S.I. 2012/630), the Controlled Waste (England and Wales) Regulations 2012 (S.I. 2012/811).

- (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.

(6) The undertakers 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, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

## PART 5

### Powers of acquisition

#### **Compulsory acquisition of land**

**15.**—(1) The undertakers 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 paragraph (2) of article 17 (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**

**16.**—(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 as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(**16**).

(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), except that nothing in this paragraph prevents the undertakers 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**

**17.**—(1) The undertakers may acquire compulsorily such rights or impose 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) Subject to the provisions of this article, article 18 (private rights) and article 25 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 6 (land in which only new rights etc. may be acquired) the undertakers's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertakers acquires an existing right over land or restrictive covenant under paragraph (1), the undertakers shall not be required to acquire a greater interest in that land.

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(16) 1981 c.66. Sections 2, 6 and 11 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c.11). There are other amendments to the 1981 Act which are not relevant to this Order.

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right 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 undertakers, the undertakers may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertakers in question.

(6) The exercise by a statutory undertakers 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 undertakers.

### **Private rights**

**18.**—(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 undertakers, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertakers under section 11(1) of the 1965 Act (power of entry),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this article (and including those lands included in column (1) of Schedule 6 (land in which only new rights etc. may be acquired)) shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right—

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

whichever is the earlier.

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right under this article 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.

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 25 (statutory undertakers) applies.

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

- (a) any notice given by the undertakers 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 undertakers's entry onto it; or
  - (iii) the undertakers's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

- (b) any agreement made at any time between the undertakers and the person in or to whom the right of way in question is vested or belongs.
- (7) If any such agreement as is referred to in paragraph (6)(b)—
  - (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

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

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

- 19.**—(1) The 1981 Act shall apply as if this Order were a compulsory purchase order.
- (2) The 1981 Act, 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 1981 Act 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**

**20.**—(1) The undertakers may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 15 (compulsory acquisition of land) or article 17 (compulsory acquisition of rights) 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 undertakers acquires any part of, or rights in, the subsoil of land under paragraph (1), the undertakers shall not be required to acquire an interest in any other part of the land.

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

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

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

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

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

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

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

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

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

the owner shall be required to sell the land subject to the notice to treat.

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

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house, the notice to treat is deemed to be a notice to treat for that part.

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

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertakers is authorised to acquire compulsorily under this Order.

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

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice, the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertakers 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 undertakers may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall 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 undertakers shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

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

**22.**—(1) The undertakers may enter on and appropriate so much of the subsoil of any street within the Order limits 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 undertakers may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertakers 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 undertakers 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 undertakers may, in connection with the carrying out of the authorised project—

(a) enter on and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised 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 (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
  - (b) remove any buildings and vegetation from that land;
  - (c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
  - (d) use the land for the purposes of a working site with access to the working site in connection with the authorised project; and
  - (e) construct any works, or use the land, as specified in relation to that land in column 3 of Schedule 8 (land of which temporary possession may be taken), or any mitigation works.
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertakers shall serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertakers shall not remain in possession of any land under this article for longer than reasonably necessary and in any event shall 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 8 (land of which temporary possession may be taken), unless the undertakers 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.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the undertakers shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertakers shall not be required to replace a building removed under this article.
- (5) The undertakers shall pay compensation to the owners and occupiers of land which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (7) Nothing in this article shall affect any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) 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 (5).
- (8) The undertakers may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertakers shall not be precluded from—
- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 17 (compulsory acquisition of rights); or
  - (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 20 (acquisition of subsoil only).
- (9) Where the undertakers takes possession of land under this article, the undertakers 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).

### **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 undertakers 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; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) shall not authorise the undertakers 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 undertakers shall serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertakers 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 undertakers shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The undertakers 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 152 of the 2008 Act (compensation in case where no right to claim in nuisance) 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 undertakers takes possession of land under this article, the undertakers 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 the authorised project first exports electricity to the national electricity transmission network.

### **Protective provisions for specified undertakers**

**25.** Schedule 9 (Protective provisions) shall have effect.

### **Statutory undertakers**

**26.** Subject to the provisions of Schedule 9 (Protective provisions) the undertakers may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the limits to the land to be acquired and described in the book of reference; and
- (b) extinguish the rights of, remove, relocate the rights of 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 undertakers or of a public communications provider is removed under article 25 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertakers compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 25, any person who is—

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

shall be entitled to recover from the undertakers 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) This article shall not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this paragraph—

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

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

## **PART 6**

### **Operations**

#### **Operation of generating station**

28.—(1) The undertakers is hereby authorised to operate the generating station comprised in the authorised development.

(2) This article does not relieve the undertakers 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 electricity generating station.

#### **Deemed marine licences under the Marine and Coastal Access Act 2009**

29. The undertakers is granted the deemed licences under Part 4 Chapter 1 of the 2009 Act to carry out the works and make the deposits specified in Part 1 of Schedule 10 (deemed licence under the Marine and Coastal Access Act 2009 – generation assets) and Part 1 of Schedule 11 (deemed licence under the Marine and Coastal Access Act 2009 – transmission assets), both subject to the conditions set out in Part 2 of those Schedules.

## PART 7

### Miscellaneous and general

#### Application of landlord and tenant law

**30.**—(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 undertakers 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

**31.** 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).

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

**32.**—(1) The undertakers may fell or lop any tree or shrub near any part of the authorised project, or cut back its roots, if it reasonably believes it to be necessary to do so 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.

(2) In carrying out any activity authorised by paragraph (1), the undertakers shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, shall be determined under Part 1 of the 1961 Act.

(4) The undertakers may, for the purposes of the authorised project—

- (a) subject to paragraph (2), remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised project; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 12 (removal of important hedgerows).

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(17).

**Certification of plans etc.**

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

- (a) the works plan—
  - document reference 2.3(a) sheet 1-4 Sep-13 rev C;
  - document reference 2.3(b) sheet 5-9 Sep-13 rev C;
  - document reference 2.3(c) sheet 10-14 Sep-13 rev C;
  - document reference 2.3(d) sheet 15-19 Sep-13 rev C;
  - document reference 2.3(e) sheet 20-24 Sep-13 rev C;
  - document reference 2.3(f) sheet 25-28 Sep-13 rev C;
- (b) the order limits boundary coordinates plan—
  - document reference 2.13 sheet 1 of 2 Nov-13 rev D;
  - document reference 2.13 -sheet 2 Nov-12 rev A;
- (c) the land plan—
  - document reference 2.2(a) sheet 1-5 Sep-13 rev C;
  - document reference 2.2(b) sheet 6-10 Sep-13 rev C;
  - document reference 2.2(c) sheet 11-15 Sep-13 rev C;
  - document reference 2.2(d) sheet 16-19 Sep-13 rev C;
  - document reference 2.2(e) sheet 20-22 Sep-13 rev C;
- (d) the important hedgerows plan—
  - document reference 2.6 sheet 1 of 13 Sep-13 rev C;
  - document reference 2.6 sheet 2 of 13 Sep-13 rev C;
  - document reference 2.6 sheet 3 of 13 Sep-13 rev C;
  - document reference 2.6 sheet 4 of 13 Sep-13 rev C;
  - document reference 2.6 sheet 5 of 13 Sep-13 rev C;
  - document reference 2.6 sheet 6 of 13 Sep-13 rev C;
  - document reference 2.6 sheet 7 of 13 Sep-13 rev C;
  - document reference 2.6 sheet 8 of 13 Sep-13 rev C;
  - document reference 2.6 sheet 9 of 13 Sep-13 rev C;
  - document reference 2.6 sheet 10 of 13 Sep-13 rev C;
  - document reference 2.6 sheet 11 of 13 Sep-13 rev C;
  - document reference 2.6 sheet 12 of 13 Sep-13 rev C;
  - document reference 2.6 sheet 13 of 13 Sep-13 rev C;
- (e) the public rights of way plan—
  - document reference 2.4 sheet 1 of 13 Sep-13 rev C;
  - document reference 2.4 sheet 2 of 13 Sep-13 rev C;

- document reference 2.4 sheet 3 of 13 Sep-13 rev C;
- document reference 2.4 sheet 4 of 13 Sep-13 rev C;
- document reference 2.4 sheet 6 of 13 Sep-13 rev C;
- document reference 2.4 sheet 7 of 13 Nov-13 rev E;
- document reference 2.4 sheet 8 of 13 Nov-13 rev E;
- document reference 2.4 sheet 9 of 13 Sep-13 rev C;
- document reference 2.4 sheet 10 of 13 Sep-13 rev C;
- document reference 2.4 sheet 11 of 13 Sep-13 rev C;
- document reference 2.4 sheet 12 of 13 Sep-13 rev C;
- document reference 2.4 sheet 13 of 13 Sep-13 rev C;
- (f) the access to works plan—
  - document reference 2.5 sheet 1 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 2 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 3 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 4 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 5 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 6 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 7 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 8 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 9 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 10 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 11 of 22 Nov-13 rev D;
  - document reference 2.5 sheet 12 of 22 Nov-13 rev E;
  - document reference 2.5 sheet 13 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 14 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 15 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 16 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 17 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 18 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 19 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 20 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 21 of 22 Sep-13 rev C;
  - document reference 2.5 sheet 22 of 22 Sep-13 rev C;
- (g) the book of reference (November 2013 – version 6);
- (h) the outline converter station design principles statement (November 2013 – version 3);
- (i) the outline written scheme of investigation: archaeology and cultural heritage (onshore) (July 2013 rev 1);
- (j) the outline code of construction practice (October 2013 – version 3);
- (k) the outline landscape and ecological management strategy (October 2013 – version 2);
- (l) the outline traffic management plan (October 2013 – version 3);

- (m) the outline travel plan (October 2013 – version 3);
- (n) the outline access management plan (October 2013 – version 3);
- (o) the outline Bawdsey bed level monitoring and remediation strategy (October 2013 – version 1);
- (p) the draft written scheme of investigation: archaeology and cultural heritage (offshore) (July 2013 – version 1);
- (q) the outline offshore operations and maintenance and monitoring plan (October 2013 – version 1);
- (r) the outline navigation monitoring strategy (October 2013 – version 1);
- (s) the outline skills strategy (October 2013 – version 1); and
- (t) the environmental statement and the further environmental information

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**

**34.** 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.

### **Requirements, appeals, etc.**

**35.—(1)** The provisions of section 72 of the 1990 Act shall apply so that requirements 10 to 32 are deemed to be imposed as and as if they were conditions imposed upon the grant of planning permission pursuant to section 72 of the 1990 Act and the development consent granted by this Order was a planning permission granted under the 1990 Act.

(2) Subsection (1) of section 78 of the 1990 Act shall apply to the development consent granted by this Order and to the requirements specified in paragraph (1) except that it shall be modified so as to read for the purposes of this Order only as if there were inserted after paragraph (b) the following—

“(bb) refuse an application for any consent, agreement or approval of that authority required by a requirement imposed on a grant of development consent or contained in a development consent order, or grant it subject to conditions; or”.

(3) Sections 78 and 79 of the 1990 Act shall have effect in relation to any appeal under the terms of this article except that the Secretary of State in question shall be the Secretary of State who would be responsible for determining an application for development consent with the subject matter of this Order if section 103(1) of the 2008 Act applied.

(4) The terms of any development order, and other rules and regulations, including without limitation regulations requiring environmental impact assessment, and which apply to applications pursuant to conditions or the subject matter of section 78 of the 1990 Act shall apply to any application or appeal made under the requirements specified in paragraph (1).

### **Abatement of works abandoned or decayed**

**36.** Where Work No. 1(a) to (c) and Work No. 2 or any part of it is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertakers, issue a written notice requiring the undertakers at its own expense to repair and restore or remove Work No. 1(a) to (c) and Work No. 2 or any relevant part of it, without prejudice to any notice served under

section 105(2) of the 2004 Act. The notice may also require the restoration of the site of the relevant part(s) of Work No. 1(a) to (c) and Work No. 2 to a safe and proper condition within an area and to such an extent as may be specified in the notice.

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

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

### **Crown rights**

**38.**—(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 undertakers or any licensee—

- (a) to take, use, enter upon 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)—
  - (i) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
  - (ii) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
  - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

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

### **Protective provisions**

**39.** Schedule 12 (protective provisions) shall have effect.

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

16th June 2014

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