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## STATUTORY INSTRUMENTS

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# 2016 No. 844

## The Hornsea Two Offshore Wind Farm Order 2016

### PART 1

#### Preliminary

#### Citation and commencement

- 1.—(1) This Order may be cited as the Hornsea Two Offshore Wind Farm Order 2016.
- (2) This Order comes into force on 7th September 2016.

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#### Commencement Information

- II** Art. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

#### Interpretation

- 2.—(1) In this Order—
  - “1961 Act” means the Land Compensation Act 1961(1);
  - “1965 Act” means the Compulsory Purchase Act 1965(2);
  - “1980 Act” means the Highways Act 1980(3);
  - “1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);
  - “1989 Act” means the Electricity Act 1989(5);
  - “1990 Act” means the Town and Country Planning Act 1990(6);
  - “1991 Act” means the New Roads and Street Works Act 1991(7);
  - “2003 Act” means the Communications Act 2003(8);
  - “2004 Act” means the Energy Act 2004(9);
  - “2008 Act” means the Planning Act 2008;
  - “2009 Act” means the Marine and Coastal Access Act 2009(10);

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(1) 1961 c.33.  
(2) 1965 c.56.  
(3) 1980 c.66.  
(4) 1981 c.66.  
(5) 1989 c.29.  
(6) 1990 c.8.  
(7) 1991 c.22.  
(8) 2003 c.21.  
(9) 2004 c.20.  
(10) 2009 c.23.

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

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

“authorised project” means the authorised development and the ancillary works;

“book of reference” means the document certified as the book of reference by the Secretary of State under article 40 (certification of plans, etc.);

“Breesea” means Breesea Limited<sup>(11)</sup> (company number 07883217);

“commence” means commence any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development other than operations consisting of site clearance, demolition work, archaeological investigations, investigations for the purpose of assessing ground conditions and remedial work in respect of any contamination or other adverse ground conditions; and “commencement” must be construed accordingly;

“compensation compound” means a construction working site forming part of the associated development and shown coloured green on the compensation compounds plan, the purpose of which is to compensate the Hornsea Project One undertaker in the event that the use by the Hornsea Project One undertaker of the Hornsea Project One construction compounds is restricted or prevented by the undertaker carrying out authorised project;

“compensation compound access” means an access forming part of the associated development and shown coloured pink on the compensation compounds plan, the purpose of which is to access a compensation compound;

“compensation compounds plan” means the plans certified as the compensation compounds plan by the Secretary of State under article 40;

“connection works” means Work Nos. 5A, 5B, 6A, 6B, 7A, 7B, 8A, 8B, 9A, 9B and 10 and any related associated development;

“deemed marine licence” means a marine licence set out in Schedule 8, 9, 10 or 11;

“EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2009;

“electrical circuit” means a number of electrical conductors necessary to transmit electricity between 2 points within the authorised development comprising—

- (a) in the case of HVAC transmission, 3 conductors which may be bundled as 1 cable or (onshore) take the form of 3 separate cables; and
- (b) in the case of HVDC transmission, 2 conductors which may be attached together or take the form of single cables,

and the electrical circuit may include 1 or more auxiliary cables (normally fibre-optic cables) for the purpose of control, monitoring, protection or general communications;

“electrical transmission station” means an onshore HVDC converter substation or HVAC substation required for connecting the electrical circuits to the National Grid;

“environmental statement” means the document certified as the environmental statement by the Secretary of State under article 40;

“gravity base foundation” means—

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<sup>(11)</sup> The registered office of Breesea Limited is 5 Howick Place, London SW1P 1WG.

- (a) a structure principally of concrete or steel (or both) that rests on the seabed due to its own weight and that of added ballast or to the weight of water above it and may include associated equipment including suction piles, J-tubes and access platforms; or
- (b) a structure principally of concrete or steel (or both) consisting of a platform supported on 2 pontoons to which the platform is connected by columns which may be connected by braces;

“highway” and “highway authority” have the same meaning as in the 1980 Act<sup>(12)</sup>;

“Hornsea Project One construction compounds” means the working sites to be used in connection with the construction of the works authorised by the Hornsea One Offshore Wind Farm Order 2014<sup>(13)</sup> and forming part of the associated development authorised by that Order;

“Hornsea Project One undertaker” means Heron Wind Limited<sup>(14)</sup> (company number 07640868) or any other person who has the benefit of the Hornsea One Offshore Wind Farm Order 2014 in respect of the works or operations authorised by that Order that are landward of MHWS;

“HVAC” means high voltage alternating current;

“HVDC” means high voltage direct current;

“in-principle monitoring plan” means the document certified as the in-principle monitoring plan by the Secretary of State under article 40;

“intra-array electrical circuits” means the electrical circuits referred to in paragraph (b) of the description of Work No. 1A and in paragraph (b) of the description of Work No. 1B;

“intertidal area” means the area between MHWS and MLWS;

“jacket foundation” means a lattice construction comprising tubular members and joints fixed to the seabed with piles (either driven/drilled piles or suction piles) which will include platforms and J-tubes and may include braced monopiles and a transition piece;

“land plans” means the plans certified as the land plans by the Secretary of State under article 40;

“LAT” means lowest astronomical tide;

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

“local planning authority” means, in relation to any land or part of the authorised development, the district council or unitary authority for the area in which the land or part of the development is situated;

“main river” has the meaning given by the Water Resources Act 1991<sup>(15)</sup>;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace any of the authorised development; and any derivative of “maintain” must be construed accordingly;

“marine export cable area” means the area described as such whose co-ordinates are set out in Part 1 of Schedule 1 and listed in the offshore works plans;

“MCA” means the Maritime and Coastguard Agency;

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

“MLWS” (mean low water springs) means the lowest level which spring tides reach on average over a period of time;

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<sup>(12)</sup> “Highway” is defined in section 328(1). For “highway authority”, see section 1.

<sup>(13)</sup> S.I. 2014/3331, amended by S.I. 2015/1280 and 2016/471.

<sup>(14)</sup> The registered office of Heron Wind Limited is 5 Howick Place, London SW1P 1WG.

<sup>(15)</sup> 1991 c.57. “Main river” is defined in section 113(1). The definition was amended by section 59(3) of the Water Act 2014 (c.21).

“MMO” means the Marine Management Organisation;

“mode of transmission” means whichever of the HVAC or HVDC technologies is chosen by the undertaker as the means of transmitting electricity by cable for the purposes of the authorised project;

“monopile foundation” means a foundation comprising a large diameter steel or concrete tube or pile driven vertically into the seabed, J-tubes and platforms and may include external structural devices such as bracing members or steel anchor wires and a transition piece;

“offshore accommodation platform” means a platform housing or incorporating temporary accommodation, landing ports for vessels and helicopters, standby electricity generation equipment, marking and lighting and other equipment facilities to assist in the co-ordination of marine activities related to the authorised development;

“offshore HVAC collector substation” means a structure serving as a collection point for the intra-array electrical circuits and containing equipment for the purpose of transforming the electricity generated at the wind turbine generators to a higher voltage; it may also include a helicopter platform;

“offshore HVDC converter substation” means a structure that contains equipment to convert HVAC electricity to HVDC electricity; it may also include a helicopter platform;

“offshore reactive compensation substation” means a structure housing electrical reactors for the purpose of limiting electrical losses in the course of HVAC transmission by providing reactive compensation; it may also include a helicopter platform;

“offshore works plans” means the part of the works plans described as the offshore works plans;

“onshore works plans” means the part of the works plans described as the onshore works plans;

“Optimus Wind” means Optimus Wind Limited<sup>(16)</sup> (company number 07883284);

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

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

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State under article 40;

“outline ecological management plan” means the document certified as the outline ecological management plan by the Secretary of State under article 40;

“outline employment and skills plan” means the document certified as the outline employment and skills plan by the Secretary of State under article 40;

“outline landscape scheme and management plan” means the document certified as the outline landscape scheme and management plan by the Secretary of State under article 40;

“Project A works” means Work Nos. 1A, 2A, 3A, 4A, 5A, 6A, 7A, 8A and 9A;

“Project B works” means Work Nos. 1B, 2B, 3B, 4B, 5B, 6B, 7B, 8B and 9B;

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

“shared works” means Work No. 10;

“street” means a street within the meaning of section 48 of the 1991 Act<sup>(17)</sup> together with land on the verge of a street or between 2 carriageways and includes part of a street;

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<sup>(16)</sup> The registered office of Optimus Wind Limited is 5 Howick Place, London SW1P 1WG.

<sup>(17)</sup> Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c.26).

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act<sup>(18)</sup>;

“suction pile” means a large diameter steel cylinder that is fixed to the base of a foundation, partially penetrates the seabed and remains in place using its weight and hydrostatic pressure differential;

“trenchless technique” means a method of installation that allows ducts and cables to be installed under an obstruction without breaking open the ground and digging a trench (examples of such techniques include horizontal directional drilling, thrust boring, auger boring and pipe ramming);

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

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

“undertaker” means, subject to article 35(8) (transfer of benefit of Order),—

- (a) for the purposes of constructing, maintaining and operating the Project A works and any associated development or ancillary works relating to those works, Optimus Wind;
- (b) for the purposes of constructing, maintaining and operating the Project B works and any associated development or ancillary works relating to those works, Breesea;
- (c) for the purposes of constructing, maintaining and operating the shared works and any associated development or ancillary works relating to those works, Optimus Wind and Breesea; and any restrictions, liabilities and obligations arising in relation to any shared works apply to the undertaker exercising the powers under this Order in relation to the shared works; and
- (d) in any other case, Optimus Wind and Breesea;

“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 that is at the time in, on or over water;

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

“wind farm area” means the area described as such whose co-ordinates are set out in Part 1 of Schedule 1;

“wind turbine generator” means a structure comprising any or all of a tower, rotor, blades, nacelle and ancillary electrical and other equipment or structures, which may include lighting and a helicopter platform, fixed to a foundation;

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

“works plans” means the plans certified as the works plans by the Secretary of State under article 40 comprising the offshore works plans, the intertidal works plans and the onshore works plans.

(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 airspace above its surface.

(3) All distances, directions and lengths referred to in this Order are approximate, except for the parameters referred to in Requirements 2 and 4 and Conditions 1 and 2 in Part 2 of each of the deemed marine licences; and distances between parts of a Work must be measured along that Work.

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<sup>(18)</sup> “Street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c.7).

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**Changes to legislation:** There are outstanding changes not yet made by the legislation.gov.uk editorial team to *The Hornsea Two Offshore Wind Farm Order 2016*. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

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(4) References in this Order to points identified by letters, with or without numbers, must be construed as references to points so lettered on the works plans.

(5) In this Order—

- (a) all offshore co-ordinates are latitude and longitude degrees, minutes and seconds to 3 decimal places in WGS84 Datum; and
- (b) all onshore co-ordinates are Eastings and Northings in OSGB36 Datum, British National Grid Projection.

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#### Commencement Information

**I2** Art. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

#### Disapplication of legislative provisions

**3.—(1)** The following provisions do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project—

- (a) the Environmental Permitting (England and Wales) Regulations 2010(**19**), to the extent that they require a permit for anything that would have required consent under section 109 of the Water Resources Act 1991 immediately before the repeal of that section;
  - (b) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 to the Water Resources Act 1991(**20**) (byelaw-making powers of the Appropriate Agency) that require consent or approval for the carrying out of the works;
  - (c) section 23 of the Land Drainage Act 1991(**21**) (prohibition of obstructions, etc. in watercourses);
  - (d) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991 (powers to make byelaws) that require consent or approval for the carrying out of the works.
- (2) The following do not apply to the authorised project—
- (a) section 25 of the River Humber Conservancy Act 1852(**22**) (penalties for improper deposit of hard materials in the river);
  - (b) section 9(ii) of the Humber Conservancy Act 1899(**23**) (licences for execution of works);
  - (c) section 6(2) of the Humber Conservancy Act 1905(**24**) (no erections in Humber below river lines or without licence above river lines).

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#### Commencement Information

**I3** Art. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

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(19) [S.I. 2010/675](#). See amendments made by [S.I. 2016/475](#).

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

(21) [1991 c.59](#). Section 23 was amended by paragraph 192 of Schedule 22 to the Environment Act 1995, paragraph 32 of Schedule 2 to the Flood and Water Management Act 2010 and [S.I. 2013/755](#). Section 66 was amended by paragraph 38 of Schedule 2 to the Flood and Water Management Act 2010 and by section 86(3) of the Water Act 2014.

(22) 15 and 16 Vict. c. cxxx.

(23) 62 and 63 Vict. c. cci.

(24) 5 Edw. 7 c. clxxix.

## Guarantees in respect of payment of compensation

4.—(1) The undertaker must not begin to exercise the powers in articles 18 to 28 in relation to any land unless it has first put in place—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose,

that has been approved by the Secretary of State.

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

(3) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 20 years after the date on which the relevant power is exercised.

### Commencement Information

**I4** Art. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

## Defence to proceedings in respect of statutory nuisance

5.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990<sup>(25)</sup> (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within section 79(1)(g) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order may be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows that the nuisance—

- (a) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site), of the Control of Pollution Act 1974<sup>(26)</sup>;
- (b) is a consequence of the construction or maintenance of the authorised project and cannot reasonably be avoided; or
- (c) is a consequence of the use of the authorised project and cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.

### Commencement Information

**I5** Art. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

<sup>(25)</sup> 1990 c.43. Section 82(1) was amended by paragraph 6 of Schedule 17 to the Environment Act 1995. Section 82(2) was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c.40) and paragraph 6 of Schedule 17 to the Environment Act 1995.

<sup>(26)</sup> 1974 c.40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c.55), paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.



## PART 2

### Principal powers

#### Development consent, etc. granted by Order

- 6.—(1) Subject to the provisions of this Order and the Requirements, Optimus Wind is granted—
- (a) development consent for the Project A works and any associated development relating to those works; and
  - (b) consent for the ancillary works relating to those works,
- to be carried out within the Order limits.
- (2) Subject to the provisions of this Order and the Requirements, Breesea is granted—
- (a) development consent for the Project B works and any associated development relating to those works; and
  - (b) consent for the ancillary works relating to those works,
- to be carried out within the Order limits.
- (3) Subject to the provisions of this Order and the Requirements, Optimus Wind and Breesea are granted—
- (a) development consent for the shared works and any associated development relating to those works; and
  - (b) consent for the ancillary works relating to those works,
- to be carried out within the Order limits.
- (4) Each Work must be constructed and maintained within the limits of deviation for that Work.
- (5) In carrying out a Work, the undertaker may deviate from the situations shown on the works plans and described in Schedule 1 to the extent of the limits of deviation.
- (6) The grant of development consent is subject to paragraphs 2(2) and (3) and 3(2) to (8) of Part 1 of Schedule 1.

#### Commencement Information

**I6** Art. 6 in force at 7.9.2016, see [art. 1\(2\)](#)

#### Maintenance of authorised project

- 7.—(1) 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.
- (2) No maintenance works, the likely effects of which on the environment must be assessed in accordance with the EIA Regulations and are not assessed in the environmental statement, may take place, unless otherwise approved by the MMO or the local planning authority.
- (3) Where the MMO or local planning authority's approval is required under paragraph (2), consent may be given only where it has been demonstrated to the satisfaction of the MMO or the local planning authority that the approval sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.



**Commencement Information**

**I7** Art. 7 in force at 7.9.2016, see [art. 1\(2\)](#)

**Operation of generating stations**

**8.—(1)** Optimus Wind is authorised to operate the generating station comprised in the Project A works.

(2) Breesea is authorised to operate the generating station comprised in the Project B works.

(3) This article does not relieve Optimus Wind or Breesea of any requirement to obtain any permit or licence under any other legislation that may be required to authorise the operation of a generating station.

**Commencement Information**

**I8** Art. 8 in force at 7.9.2016, see [art. 1\(2\)](#)

## PART 3

### Streets

**Street works**

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

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

(2) In this article, “apparatus” has the same meaning as in Part 3 of the 1991 Act<sup>(27)</sup>.

**Commencement Information**

**I9** Art. 9 in force at 7.9.2016, see [art. 1\(2\)](#)

**Application of New Roads and Street Works Act 1991**

**10.—(1)** The provisions of the 1991 Act mentioned in paragraph (2) that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) the carrying out of works under article 9 (street works); and

<sup>(27)</sup> “Apparatus” is defined in sections 89(3) and 105(1).

- (b) the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under article 11 (temporary stopping up of streets),

whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act<sup>(28)</sup> are—

- (a) subject to paragraph (3), section 54 (advance notice of certain works);
- (b) subject to paragraph (3), section 55 (notice of starting date of works);
- (c) section 57 (notice of emergency works);
- (d) section 59 (general duty of street authority to co-ordinate works);
- (e) section 60 (general duty of undertakers to co-operate);
- (f) section 68 (facilities to be afforded to street authority);
- (g) section 69 (works likely to affect other apparatus in the street);
- (h) section 76 (liability for cost of temporary traffic regulation);
- (i) section 77 (liability for cost of use of alternative route); and
- (j) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs (a) to (i).

(3) Sections 54 and 55 of the 1991 Act as applied by paragraph (1) have effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

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#### Commencement Information

**I10** Art. 10 in force at 7.9.2016, see [art. 1\(2\)](#)

### Temporary stopping up of streets

**11.**—(1) The undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—

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

(2) Without limiting paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article within the Order limits as a temporary working site.

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

(4) Without limiting paragraph (1), the undertaker may temporarily stop up, alter or divert the streets set out in column (2) of Schedule 3 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule.

(5) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site—

- (a) any street referred to in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to the consent.

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<sup>(28)</sup> Sections 54, 55, 57, 59, 60, 68 and 69 were amended by the Traffic Management Act 2004 (c.18).

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

(7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b), the street authority is deemed to have given consent.

**Commencement Information**

**I11** Art. 11 in force at 7.9.2016, see [art. 1\(2\)](#)

**Access to works**

**12.**—(1) The undertaker 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 set out in column (2) of Schedule 4 (access to works); and
- (b) with the approval of the local 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 undertaker reasonably requires for the purposes of the authorised project.

(2) If the local planning authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(b), the local planning authority is deemed to have given approval.

**Commencement Information**

**I12** Art. 12 in force at 7.9.2016, see [art. 1\(2\)](#)

**Agreements with street authorities**

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

- (a) the construction of any new street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in article 9(1) (street works).

(2) Such an agreement may, without limiting paragraph (1),—

- (a) provide for the street authority to carry out any function under this Order that 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.

**Commencement Information**

**I13** Art. 13 in force at 7.9.2016, see [art. 1\(2\)](#)

**Highway improvements**

**14.**—(1) The undertaker may carry out highway improvements to the plot marked 133 on the land plans.

(2) The highway improvements must be carried out in accordance with plans approved by the highway authority, such approval not to be unreasonably withheld.

(3) If the highway authority fails to notify the undertaker of its decision within 28 days of receiving plans for approval under paragraph (2), the highway authority is deemed to have given approval.

#### Commencement Information

**I14** Art. 14 in force at 7.9.2016, see [art. 1\(2\)](#)

## PART 4

### Supplemental powers

#### Discharge of water

**15.**—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits and subject to receipt of consent under paragraph (3), make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker under paragraph (1) must be determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>(29)</sup> (right to communicate with public sewers).

(3) The undertaker must not discharge any water into any watercourse, public sewer or drain without 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 must not be unreasonably withheld.

(4) The undertaker must not make any opening into any public sewer or drain except—

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

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

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

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

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

(9) In this article—

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<sup>(29)</sup> 1991 c.56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c.43) and sections 36(2) and 99 of the Water Act 2003 (c.37). There are other amendments to this section which are not relevant to this Order.

- (a) “public sewer or drain” means a sewer or drain that belongs to the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964<sup>(30)</sup> (interpretation), an internal drainage board, a local authority or a sewerage undertaker<sup>(31)</sup>; and
- (b) other expressions, excluding “watercourse”, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

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**Commencement Information**

**I15** Art. 15 in force at 7.9.2016, see [art. 1\(2\)](#)

**Protective work to buildings**

**16.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building lying within the Order limits as the undertaker considers necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the carrying out in the vicinity of the building of any part of the authorised project; or
- (b) after the completion of that part of the authorised project in the vicinity of the building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised project is first opened for use.

(3) For the purpose of determining how the powers under this article are to be exercised, the undertaker may enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building, the undertaker may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land that is adjacent to the building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works to a building;
- (b) a power under paragraph (3) to enter a building and land within its curtilage;
- (c) a power under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a power under paragraph (4)(b) to enter land,

the undertaker must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days’ notice of its intention to exercise the power and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient

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<sup>(30)</sup> 1964 c.40.

<sup>(31)</sup> “Sewerage undertaker” is defined in Schedule 1 to the Interpretation Act 1978 (c.30).

to carry out the protective works or to enter the building or land to be referred to arbitration under article 41 (arbitration).

(7) The undertaker must compensate the owners and occupiers of any building or land in relation to which powers under this article have been exercised for any loss or damage arising to them by reason of the exercise of the powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised project carried out in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the carrying out or use of that part of the authorised project,

the undertaker must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 152 of the 2008 Act<sup>(32)</sup> (compensation in case where no right to claim in nuisance).

(10) Any compensation payable under paragraph (7) or (8) must be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article “protective works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused to the building by the carrying out, maintenance or use of the authorised project; and
- (b) any works the purpose of which is to remedy any damage that has been caused to the building by the carrying out, maintenance or use of the authorised project.

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#### Commencement Information

**I16** Art. 16 in force at 7.9.2016, see [art. 1\(2\)](#)

#### Authority to survey and investigate land

**17.**—(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 limiting sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limiting sub-paragraph (a), carry out ecological or archaeological investigations on such land; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.

(2) No land may be entered, or equipment placed or left on or removed from the land, under paragraph (1) unless at least 14 days’ notice has been served on every owner and occupier of the land.

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

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

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<sup>(32)</sup> Section 152 was amended by [S.I. 2009/1307](#).

- (b) may take with him or her such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes may be made under this article—
- (a) in land located within the highway boundary without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,
- but such consent must not be unreasonably withheld.
- (5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (6) If a highway authority or a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent—
- (a) in the case of a highway authority, under paragraph (4)(a); or
- (b) in the case of a street authority, under paragraph (4)(b),
- the authority is deemed to have given consent.

**Commencement Information**

**I17** Art. 17 in force at 7.9.2016, see [art. 1\(2\)](#)

## PART 5

### Powers of acquisition, etc.

#### Compulsory acquisition of land

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

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

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

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

**Commencement Information**

**I18** Art. 18 in force at 7.9.2016, see [art. 1\(2\)](#)



## Compulsory acquisition of rights

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

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

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

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

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

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

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

(8) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

### Commencement Information

**I19** Art. 19 in force at 7.9.2016, see [art. 1\(2\)](#)

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

20.—(1) After 15th August 2021—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the 1981 Act<sup>(33)</sup>, as applied by article 22 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

<sup>(33)</sup> Section 4 is amended, from a date to be appointed, by sections 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c.22).

(2) The authority conferred by article 26 ceases at the end of 15th August 2021, but nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered, and possession taken, on or before that date.

**Commencement Information**

**I20** Art. 20 in force at 7.9.2016, see [art. 1\(2\)](#)

**Private rights**

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

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act<sup>(34)</sup> (power of entry),

whichever is the earlier.

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

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act<sup>(35)</sup> (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 28 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land, or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of it,
  - (iii) the undertaker's entry onto it, or

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<sup>(34)</sup> Section 11(1) was amended by paragraph 14 of Schedule 4 to the Acquisition of Land Act 1981 and paragraph 12 of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1).

<sup>(35)</sup> Section 138 was amended by section 23(4) of the Growth and Industry Act 2013 (c.27).

- (iv) the undertaker's taking temporary possession of it, that any or all of those paragraphs do not apply to any right specified in the notice; or
  - (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (7) If an agreement referred to in paragraph (6)(b)—
- (a) is made with a person in or to whom the right is vested or belongs; and
  - (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

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

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

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

#### Commencement Information

**I21** Art. 21 in force at 7.9.2016, see [art. 1\(2\)](#)

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

- 22.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.
- (3) In section 3 (preliminary notices), for subsection (1), substitute—
- “(1) Before making a declaration under section 4 with respect to any land that is subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice that is—
- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
  - (b) published in a local newspaper circulating in the area where the land is situated.”.

(4) In that section, in subsection (2)—

    - (a) for “(1)(b)”, substitute “(1)”; and
    - (b) after “given”, insert “and published”.

(5) In that section, for subsections (5) and (6), substitute—

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

    - (a) the person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
    - (b) the person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds 1 month.”.

- (6) In section 5 (earliest date for execution of declaration)—
- (a) in subsection (1), after “publication”, insert “in a local newspaper circulating in the area in which the land is situated”; and
  - (b) omit subsection (2).

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

(8) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 of the 2008 Act<sup>(36)</sup> (application of compulsory acquisition provisions) to the compulsory acquisition of land under this Order.

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**Commencement Information**

**I22** Art. 22 in force at 7.9.2016, see [art. 1\(2\)](#)

**Acquisition of subsoil or airspace only**

**23.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of, or the airspace over, the land referred to in article 18 as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) does not prevent article 24 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

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**Commencement Information**

**I23** Art. 23 in force at 7.9.2016, see [art. 1\(2\)](#)

**Acquisition of part of certain properties**

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

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

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

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

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<sup>(36)</sup> Section 125 was amended by paragraph 17 of Schedule 16 to the Housing and Planning Act 2016.

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

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

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

the owner must sell the land subject to the notice to treat.

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

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

the notice to treat is deemed to be a notice to treat for that part.

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

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

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

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

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

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

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

#### Commencement Information

**I24** Art. 24 in force at 7.9.2016, see [art. 1\(2\)](#)

### Rights under or over streets

**25.**—(1) The undertaker may—

- (a) enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised project; and
- (b) use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised project.

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

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

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

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

- (a) is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land; and
- (b) suffers loss as a result,

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

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

#### Commencement Information

**I25** Art. 25 in force at 7.9.2016, see [art. 1\(2\)](#)

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

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

(a) enter on and take temporary possession of—

- (i) the Order land set out in column (2) of Part 1 of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule;
- (ii) the Order land set out in column (2) of Part 2 of Schedule 7 for the purpose specified in relation to that land in column (3) of that Schedule;
- (iii) any of the land referred to in article 18 and Schedule 5 in respect of which (other than in connection with the acquisition of rights only) no notice of entry has been served under section 11 of the 1965 Act and no declaration has been made under section 4 of the 1981 Act;

- (b) remove any buildings and vegetation from that land;
  - (c) construct temporary works (including the provision of means of access) and buildings on that land; and
  - (d) construct or carry out any works or operations specified in relation to that land in column (3) of Parts 1 and 2 of Schedule 7 or any other mitigation works or operations (including land drainage restoration works).
- (2) The undertaker may for the purpose of obtaining access to construct the authorised project—
- (a) make temporary use, in common with other persons enjoying rights over that land, of access routes over the land set out in Part 3 of Schedule 7; and
  - (b) carry out any necessary works to improve those access routes (and for that purpose only take temporary possession of the area in which the work is to be carried out for the duration of that work).
- (3) The undertaker may for the purpose of obtaining access to the compensation compounds—
- (a) make temporary use, in common with other persons enjoying rights over that land, of access routes over the land set out in Part 4 of Schedule 7; and
  - (b) carry out any necessary works to improve those access routes (and for that purpose only take temporary possession of the area in which the work is to be carried out for the duration of that work).
- (4) Not less than 14 days before entering on and taking temporary possession of or using land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (5) The undertaker must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of 1 year beginning with—
- (a) in the case of land referred to in paragraph (1)(a)(i), the date of completion of the construction, installation or implementation of the part of the authorised project specified in relation to that land in column (4) of Part 1 of Schedule 7;
  - (b) in the case of land referred to in paragraph (1)(a)(ii), the date on which the compensation compound ceases to be required;
  - (c) in the case of land referred to in paragraph (1)(a)(iii), the date of completion of the construction, installation or implementation of the work for which temporary possession of this land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act.
- (6) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—
- (a) replace a building removed under this article; or
  - (b) restore land on which any works have been constructed under paragraph (1)(d).
- (7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of any power conferred by this article.
- (8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.
- (9) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in



respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (7).

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

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

(12) Section 13 of the 1965 Act<sup>(37)</sup> (refusal to give possession to acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act.

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

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**Commencement Information**

**I26** Art. 26 in force at 7.9.2016, see [art. 1\(2\)](#)

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

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

- (a) enter on and take temporary possession of any land referred to in article 26(1)(a)(i) or (iii) if such possession is reasonably required for the purpose of maintaining the authorised project; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

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

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

(3) Not less than 28 days before entering on and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may remain in possession of land under this article only for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession is taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

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

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<sup>(37)</sup> Section 13 was amended by section 139 of, and paragraph 28(2) of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

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

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

(10) Section 13 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act.

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

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

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

#### Commencement Information

**I27** Art. 27 in force at 7.9.2016, see [art. 1\(2\)](#)

### Statutory undertakers

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

- (a) exercise the powers conferred by articles 18 and 19 in relation to so much of any land referred to in those articles as belongs to statutory undertakers; and
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers over or within the Order land referred to in those articles.

#### Commencement Information

**I28** Art. 28 in force at 7.9.2016, see [art. 1\(2\)](#)

### Recovery of costs of new connections

**29.—(1)** Where any apparatus of a public utility undertaker or a public communications provider is removed under article 28 (statutory undertakers), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer, but where such a sewer is removed under article 28, any person who is—

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

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

(3) In this article—

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

“public utility undertaker” has the same meaning as in the 1980 Act<sup>(38)</sup>.

#### Commencement Information

**I29** Art. 29 in force at 7.9.2016, see [art. 1\(2\)](#)

## PART 6

### Operations

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

**30.**—(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub 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 undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

(4) The undertaker may remove any hedgerows within the Order limits that may be required for the purposes of the carrying out of the authorised development.

(5) Regulation 6 of the Hedgerows Regulations 1997<sup>(39)</sup> is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j)—

“(k) for carrying out development that has been authorised by a development consent pursuant to the Planning Act 2008.”.

(6) In this article, “hedgerow” has the same meaning as in the Hedgerows Regulations 1997.

#### Commencement Information

**I30** Art. 30 in force at 7.9.2016, see [art. 1\(2\)](#)

#### Trees subject to tree preservation orders

**31.**—(1) The undertaker may lop any tree within or overhanging land within the Order limits that is subject to a tree preservation order made after 3rd November 2014.

(2) In carrying out any activity authorised by paragraph (1)—

<sup>(38)</sup> “Public utility undertaker” is defined in section 329.

<sup>(39)</sup> [S.I. 1997/1160](#).

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- (a) the undertaker must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity; and
  - (b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) does not apply.
- (3) The authority given by paragraph (1) constitutes a deemed consent under the relevant tree preservation order.
- (4) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, must be determined under Part 1 of the 1961 Act.

#### Commencement Information

**I31** Art. 31 in force at 7.9.2016, see [art. 1\(2\)](#)

## PART 7

### Miscellaneous and general

#### Operational land for purposes of 1990 Act

**32.** Development consent granted by this Order must 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).

#### Commencement Information

**I32** Art. 32 in force at 7.9.2016, see [art. 1\(2\)](#)

#### Procedure in relation to approvals, etc. under requirements

**33.** Where an application is made to the local planning authority for any consent, agreement or approval required by a Requirement, the following provisions (so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission) apply in relation to the application as if the Requirement were a condition imposed on a grant of planning permission—

- (a) sections 78 and 79 of the 1990 Act<sup>(40)</sup> (right of appeal in relation to planning decisions);
- (b) any orders, rules or regulations which make provision in relation to appeals under section 78 of the 1990 Act,

insofar as those provisions are not inconsistent with the EIA Regulations and any orders, rules or regulations made under the 2008 Act.

#### Commencement Information

**I33** Art. 33 in force at 7.9.2016, see [art. 1\(2\)](#)

<sup>(40)</sup> Section 78 was amended by section 43(2) of the Planning and Compulsory Purchase Act 2004 (c.5), paragraph 3(b) of Schedule 10 to the Planning Act 2008, section 123(3) of, and paragraph 11 of Schedule 12 to, the Localism Act 2011, paragraph 8 of Schedule 1 to the Growth and Infrastructure Act 2013, paragraph 12 of Schedule 4 to the Infrastructure Act 2015 and paragraph 21 of Schedule 12 to the Housing and Planning Act 2016. Section 79 was amended by section 18 of, and paragraph 19 of Schedule 7 to, the Planning and Compensation Act 1991 (c.34), paragraph 4 of Schedule 10 to the Planning Act 2008 and paragraph 23 of Schedule 12 to the Housing and Planning Act 2016.

### Offshore works: abandonment or decay

**34.**—(1) Where the authorised development constructed seaward of MHWS or any part of it is abandoned or allowed to fall into decay, the Secretary of State may, following consultation with the undertaker, by notice in writing require the undertaker at its own expense—

- (a) to repair and restore the authorised development or any part of it;
- (b) to remove the authorised development or any part of it; and
- (c) to restore the site to a safe and appropriate condition within an area and to such an extent as may be specified in the notice.

(2) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice—

- (a) the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice;
- (b) any expenditure incurred by the Secretary of State in doing so is recoverable from the undertaker.

(3) Nothing in this article limits the Secretary of State’s powers under Chapter 3 of Part 2 of the 2004 Act (decommissioning of offshore installations).

#### Commencement Information

**I34** Art. 34 in force at 7.9.2016, see [art. 1\(2\)](#)

### Transfer of benefit of Order

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

(2) The undertaker may—

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

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

- (a) a transfer or grant of the benefit of any of the provisions (and any related statutory rights) relating to Work No. 1A or 1B from one undertaker to the other; or
- (b) a transfer or grant of any of the provisions (and any related statutory rights) relating to Work Nos. 2A, 2B, 3A, 3B, 4A, 4B, 5A, 5B, 6A, 6B, 7A, 7B, 8A, 8B, 9A, 9B or 10 to a person who holds a licence under section 6 of the 1989 Act.

(4) Where the consent of the Secretary of State is required for a transfer or grant under paragraph (1), the Secretary of State must consult the MMO before giving consent if the proposed transfer or grant is relevant to the exercise of functions within the MMO’s jurisdiction.

(5) Where there is a transfer or grant under paragraph (2)—

- (a) the exercise by the transferee or, as the case may be, by the lessee of any benefit or right conferred by the transfer or grant (the “transferred benefit”) is subject to the same

restrictions, liabilities and obligations as would apply under this Order if the benefit or right were exercised by the undertaker; and

- (b) the transferred benefit resides exclusively with the transferee or lessee, and any breach of a restriction or an obligation with respect to the transferred benefit is not be enforceable against the person making the transfer or grant, except for a breach occurring before the date of transfer.
- (6) At least 5 days before a transfer or grant under paragraph (2) takes effect, the undertaker must give notice in writing—
- (a) to the Secretary of State; and
  - (b) if the transfer or grant is relevant to the exercise of functions within the MMO’s or the local planning authority’s jurisdiction, to the MMO or the local planning authority (or to both).
- (7) The notice must—
- (a) state—
    - (i) the name and contact details of the transferee or lessee;
    - (ii) the date on which the transfer or grant takes effect;
    - (iii) the provisions transferred or granted; and
    - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (5)(a), apply to the transferee or lessee;
  - (b) be accompanied by—
    - (i) where relevant, a plan showing the Works or areas to which the transfer or grant relates;
    - (ii) where the Secretary of State’s consent is needed for the transfer or grant, a copy of the consent; and
    - (iii) a copy of the document effecting the transfer or grant signed by the person making the transfer or grant and the transferee or lessee; and
  - (c) be signed by the person making the transfer or grant and the transferee or lessee.
- (8) Where there is a transfer or grant under paragraph (2), references in this Order to the undertaker, except in paragraph (5), include references to the transferee or lessee.

#### Commencement Information

**I35** Art. 35 in force at 7.9.2016, see [art. 1\(2\)](#)

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

**36.** The marine licences set out in Schedules 8 to 11 are deemed to have been issued under Part 4 of the 2009 Act (marine licensing) for the licensed activities set out in Part 1, and subject to the Conditions set out in Part 2, of each licence.

#### Commencement Information

**I36** Art. 36 in force at 7.9.2016, see [art. 1\(2\)](#)

## Saving for Trinity House

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

### Commencement Information

I37 Art. 37 in force at 7.9.2016, see [art. 1\(2\)](#)

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

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order compulsorily to acquire an interest in any land that 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.

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

### Commencement Information

I38 Art. 38 in force at 7.9.2016, see [art. 1\(2\)](#)

## Protective provisions

39. Schedule 12 (protective provisions) has effect.

### Commencement Information

I39 Art. 39 in force at 7.9.2016, see [art. 1\(2\)](#)

## Certification of plans, etc.

40.—(1) The undertaker must, as soon as practicable after this Order is made, submit to the Secretary of State copies of the documents listed in Schedule 13 (documents to be certified) for certification that they are true copies of the documents referred to in this Order.

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



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**Commencement Information**

**I40** Art. 40 in force at 7.9.2016, see [art. 1\(2\)](#)

**Arbitration**

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

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**Commencement Information**

**I41** Art. 41 in force at 7.9.2016, see [art. 1\(2\)](#)

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

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

16th August 2016

**Changes to legislation:**

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**Changes and effects yet to be applied to :**

- Sch. 1 Pt. 3 para. 2(24) sum substituted by [S.I. 2018/370 art. 2\(1\)](#)
- Sch. 1 Pt.01 para. 4(g) words substituted by [S.I. 2016/1104 Sch.](#)
- Sch. 1 Pt.01 para. 4(h) words substituted by [S.I. 2016/1104 Sch.](#)
- Sch. 1 Pt.01 para. 4(i) words substituted by [S.I. 2016/1104 Sch.](#)
- Sch. 1 Pt.01 para. 4(r) words substituted by [S.I. 2016/1104 Sch.](#)
- Sch. 1 Pt. 1 para. 3(1) words substituted by [S.I. 2018/570 art. 2\(2\)](#)
- Sch. 1 Pt. 1 para. 3(2) words substituted by [S.I. 2018/570 art. 2\(3\)](#)
- Sch. 1 Pt. 3 para. 2(4)(b) words substituted by [S.I. 2018/570 art. 2\(4\)](#)
- Sch. 13 para. 1 Table words inserted by [S.I. 2016/1104 Sch.](#)
- Sch. 13 para. 11 words inserted by [S.I. 2016/1104 Sch.](#)
- Sch. 13 para. 8 words substituted by [S.I. 2016/1104 Sch.](#)
- art. 2(1) words inserted by [S.I. 2016/1104 Sch.](#)
- art. 3(1)(a) words substituted by [S.I. 2016/1154 Sch. 29 Pt. 2 para. 118\(2\)](#)
- art. 15(7) words substituted by [S.I. 2016/1154 Sch. 29 Pt. 2 para. 118\(3\)](#)
- art. 15(9)(b) words substituted by [S.I. 2016/1154 Sch. 29 Pt. 2 para. 118\(3\)](#)
- art. 35(5)(b) word omitted by [S.I. 2016/1104 Sch.](#)

**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 Pt.03 para. 6(l) words substituted by [S.I. 2016/1104 Sch.](#)
- Sch. 12 Pt. 6 para. 5(a) words substituted by [S.I. 2016/1154 Sch. 29 Pt. 2 para. 118\(4\)](#)