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STATUTORY INSTRUMENTS

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**2016 No. 818**

**The North Wales Wind Farms Connection Order 2016**

**PART 5**

**POWERS OF ACQUISITION**

**Compulsory acquisition of rights**

**18.**—(1) Subject to article 19, the undertaker may create and acquire compulsorily the rights over the Order land and impose the restrictions affecting the Order land described in the book of reference and shown on the land plans.

(2) Subject to section 8 of the 1965 Act, as substituted by paragraph 5 of Schedule 7 to this Order (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker creates and acquires a right over land or imposes a restriction under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) has 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 imposition of a restriction.

(4) In any case where the creation and acquisition of rights or the imposition of a restriction under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictions to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power pursuant to a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(6) Nothing in this article authorises the acquisition of rights over, or the imposition of restrictions affecting, an interest which is for the time being held by or on behalf of the Crown.

**Crown land**

**19.** The undertaker may exercise any right under this Order to acquire compulsorily an interest in any land which is Crown land (as defined in the 2008 Act) forming part of The Crown Estate, provided that the interest to be acquired is—

- (a) identified in the book of reference;
- (b) for the time being held otherwise than by or on behalf of the Crown; and
- (c) in a plot that is expressly referred to in the letter provided by the Crown Estate Commissioners with regard to section 135 of the 2008 Act dated 27th July 2016.

### **Statutory authority to override easements and other rights**

**20.**—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to use of land arising by virtue of contract,

caused by the carrying out or use of the authorised development and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) (with any necessary modifications).

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

**21.**—(1) If, after the end of the period of 5 years beginning on the day on which the Order is made—

- (a) no notice to treat has been served under Part 1 of the 1965 Act; and
- (b) no declaration has been executed under section 4 of the 1981 Act as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981)(1)

the authority conferred by article 27 (temporary use of land for carrying out the authorised development) ceases.

(2) Nothing in paragraph (1) prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Funding**

**22.**—(1) The undertaker must not begin to exercise the powers provided within Parts 3, 4, 5 and 6 of this Order in relation to any land unless it has first put in place either:

- (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 which 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 the Order is to be treated as enforceable against the guarantor by any person to whom such compensation is payable and must be in such form as to be capable of enforcement by such a person.

(3) The guarantee or alternative form of security is to be in place for a maximum of 20 years from the date on which the relevant power is exercised.

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(1) 1981 c.66.

## Private rights

**23.**—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to the compulsory creation and acquisition of rights or the imposition of restrictions under this Order are suspended and unenforceable or, where so notified by the undertaker to the person with the benefit of such private rights or restrictive covenant, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right created and acquired or the burden of the restriction imposed—

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants over Order land owned by the undertaker or in which the undertaker has the benefit of an easement are extinguished on commencement of any activity authorised by this Order which would otherwise interfere with or breach such rights or restrictive covenants.

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

(4) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this Order is entitled to compensation 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 29 (statutory undertakers) applies.

(6) Paragraphs (1) to (2) and (4) have effect subject to—

- (a) any notice given by the undertaker before—
  - (i) the completion of the creation and acquisition of rights or the imposition of restrictions over or affecting the land;
  - (ii) the undertaker's appropriation of it;
  - (iii) the undertaker's entry onto it; or
  - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
- (b) any agreement made at any time between the undertaker and the person in or to whom the right or restrictive covenant 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 or restrictive covenant is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(8) Reference in this article to private rights and restrictive covenants over land includes any trust, incident, easement, wayleave, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including natural right to support and personal covenants.

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

**24.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there is 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 must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

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

(5) In that section, for subsections (5) and (6) there is 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 is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is 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)” are omitted.

(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 to the compulsory acquisition of rights under this Order.

### **Acquisition of subsoil or airspace only**

**25.**—(1) The undertaker may acquire compulsorily such rights in the subsoil of, or the airspace over, the land referred to in article 18 (compulsory acquisition of rights) as may be required for any purpose for which rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring any greater interest in that land.

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

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

**26.**—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(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) is not to 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 in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

### **Temporary use of land for carrying out the authorised development**

27.—(1) Subject to paragraphs (2) to (11), the undertaker may, in connection with the carrying out of the authorised development—

(a) enter on and take temporary possession of—

- (i) so much of 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 development specified in column (4) of that Schedule; and
- (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);

(b) remove any electric line, electrical plant, buildings, structures, poles, means of enclosure, apparatus and vegetation from that land;

(c) construct temporary works and permanent works (including the provision of means of access) and structures on that land and use that land as temporary laydown area, storage area and working area;

(d) construct any works specified in relation to that land in column (3) of Schedule 8; and

(e) carry out mitigation works required pursuant to the Requirements in Schedule 2.

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

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under either paragraph (1)(a)(i) or (1)(a)(ii), remove all temporary and permanent works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace any electric line, electrical plant, buildings, structures, poles and apparatus removed under this article; or
  - (b) restore the land on which any works have been carried out under paragraph (1)(d) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the Requirements in Schedule 2.
- (5) 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 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, is to be determined under Part 1 of the 1961 Act.
- (7) 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 development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) Nothing in this article precludes the undertaker from—
- (a) acquiring new rights or imposing restrictions on any part of the Order land under article 18 (compulsory acquisition of rights); or
  - (b) acquiring any right in the subsoil or of airspace over the Order land under article 25 (acquisition of subsoil or airspace only).
- (9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) 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 (application of compulsory acquisition provisions).
- (11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8.

### **Temporary use of land for maintaining and decommissioning the authorised development**

- 28.**—(1) Subject to paragraphs (2) to (10), at any time during the maintenance period and decommissioning period relating to any part of the authorised development, the undertaker may—
- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
  - (b) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of decommissioning the authorised development;
  - (c) construct such temporary works (including the provision of means of access) and structures on the land as may be reasonably necessary for that purpose; and
  - (d) enter on any land within the Order limits for purpose of gaining access as is reasonably required for the purpose of maintaining or decommissioning the authorised development.
- (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 only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance or decommissioning of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker 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 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, is to be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance or decommissioning of the authorised development, 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 to be required to acquire any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) 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 (application of compulsory acquisition provisions).

(11) In this article—

“the maintenance period” means the period of 5 years beginning with the date of final commissioning except where—

(a) the authorised development is landscape planting or reinstatement planting where “the maintenance period” means such period as is agreed between the undertaker and the relevant planning authority pursuant to Requirement 5(1) and Requirement 7(2) beginning with the date on which that part of the landscape planting or reinstatement planting is completed provided that such period shall not exceed 7 years, or

(b) the authorised development is the laying of hedgerows pursuant to paragraph 2.7.4 of the outline hedgerow management plan where “the maintenance period” means a period of 15 years beginning with the date on which that part of the hedgerow is first planted;

“the decommissioning period” means the period in which decommissioning is to take place, as agreed with the relevant planning authority in the decommissioning and site restoration scheme to be approved pursuant to Requirement 17.

### **Statutory undertakers**

**29.** Subject to the provisions of Schedule 9 (protective provisions), the undertaker may—

(a) extinguish or suspend the rights of, remove or reposition the apparatus belonging to, statutory undertakers shown on the land plans and described in the book of reference; and

(b) create and acquire compulsorily the rights or impose restrictions over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

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

**30.—**(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be entitled to recover

from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 (statutory undertakers) 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,

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

(3) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(2); and

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