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STATUTORY INSTRUMENTS

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**2021 No. 1414**

**The Norfolk Boreas Offshore Wind Farm Order 2021**

**PART 1**

Preliminary

**Citation and commencement**

1. This Order may be cited as the Norfolk Boreas Offshore Wind Farm Order 2021 and comes into force on 1st January 2022.

**Commencement Information**

**II** Art. 1 in force at 1.1.2022, see [art. 1](#)

**Interpretation**

2.—(1) In this Order —

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

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

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

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);

“the 1989 Act” means the Electricity Act 1989(5);

“the 1990 Act” means the Town and Country Planning Act 1990(6);

“the 1991 Act” means the New Roads and Street Works Act 1991(7);

“the 2003 Act” means the Communications Act 2003(8);

“the 2004 Act” means the Energy Act 2004(9);

“the 2008 Act” means the Planning Act 2008(10);

“the 2009 Act” means the Marine and Coastal Access Act 2009(11);

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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) 2008 c. 29.

(11) 2009 c. 23.

“the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016<sup>(12)</sup>;

“access to works plan” means the plan certified as the access to works plan by the Secretary of State for the purposes of this Order under article 37;

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

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

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

“book of reference” means the book of reference certified by the Secretary of State under article 37 as the book of reference for the purposes of this Order;

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

“business day” means a day other than Saturday or Sunday which is not Christmas Day, Good Friday or a bank holiday under section 1 of the Banking and Financial Dealings Act 1971<sup>(13)</sup>;

“cable” means any onshore or offshore cable and in respect of any onshore cable includes direct lay cables and/or cables pulled through cable ducts;

“cable ducts” means conduits for the installation of cables and/or fibre optic cables;

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

“commence” means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for pre-construction surveys and monitoring approved under the deemed marine licences or, (b) in respect of any other works comprised in the authorised project, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than operations consisting of site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, temporary hard standing, the temporary display of site notices or advertisements and the words “commencement” and “commenced” must be construed accordingly;

“converter building” means the building housing the principal electrical equipment comprised in Work No. 8A;

“deemed marine licences” means the marine licences set out in Schedules 9, 10, 11, 12 and 13;

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

“design and access statement” means the document certified as the design and access statement by the Secretary of State for the purposes of this Order under article 37;

“development principles” means the document certified as the ‘development principles: layout design rules’ by the Secretary of State for the purposes of the Order under article 37;

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<sup>(12)</sup> S.I. 2016/1154.

<sup>(13)</sup> 1971 c. 80.

“draft marine mammal mitigation protocol” means the document certified as the draft marine mammal mitigation protocol by the Secretary of State for the purposes of this Order under article 37;

“draught height” means the distance between the lowest point of the rotating blade of a wind turbine generator and MHWS;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order under article 37;

“gravity base” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or additional skirts and associated materials and equipment including scour protection, J-tubes, transition piece, corrosion protection systems, fenders and maintenance equipment, boat access systems, access ladders and access and rest platform(s) and equipment;

“HAT” means highest astronomical tide;

“highway” has the same meaning as in section 328(1) of the 1980 Act;

“highway authority” means Highways England or Norfolk County Council (as appropriate);

“horizontal directional drilling” means a trenchless technique for installing an underground duct between two points without the need to excavate vertical shafts;

“Hornsea Three Offshore Wind Farm Development Consent Order” means the development consent order made by the Secretary of State in relation to the Hornsea Three offshore wind farm on 31st December 2020(14);

“important hedgerows plan” means the document certified as the important hedgerows plan by the Secretary of State for the purposes of this Order under article 37;

“in principle Norfolk Boreas Southern North Sea Special Area of Conservation site integrity plan” means the document certified as the in principle Norfolk Boreas Southern North Sea Special Area of Conservation Site Integrity plan by the Secretary of State for the purposes of this Order under article 37;

“interface cables” means buried onshore cables and fibre optic cables which connect the onshore project substation to the National Grid substation;

“jacket foundation” means a steel jacket/lattice-type structure constructed of steel which is fixed to the seabed at three or more points with steel pin piles or steel suction caissons and associated materials and equipment including scour protection, J-tubes, transition piece, corrosion protection systems, fenders and maintenance equipment, boat access systems, access ladders and access and rest platform(s) and equipment;

“jointing pit” means an excavation formed to enable the jointing of high voltage power cables and fibre optic cables;

“jointing works” means a process by which two or more cables or fibre optic cables are connected to each other by means of cable joints within a jointing pit;

“landfall” means the location at which the offshore cables and fibre optic cables come ashore;

“land plans” means the plan or plans certified as the land plan or plans by the Secretary of State for the purposes of this Order under article 37;

“LIDAR” means light detection and ranging;

“limits of deviation” means the limits of deviation referred to in article 4 (limits of deviation) for the overhead line modification works comprised in Work No. 11B;

“main river” has the same meaning as is in the Water Resources Act 1991(15);

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(14) S.I. 2020/1656.

(15) 1991 c. 56, “main river” is defined in section 113.

“maintain” includes inspect, upkeep, repair, adjust, and alter, and further includes remove, reconstruct and replace (but only in relation to any of the ancillary works in Part 2 of Schedule 1 (ancillary works), any cable, any component part of any wind turbine generator, offshore electrical substation, offshore service platform, meteorological mast, and the onshore transmission works described in Part 1 of Schedule 1 (authorised development) not including the removal, reconstruction or replacement of foundations and buildings associated with the onshore project substation), to the extent assessed in the environmental statement; and “maintenance” is construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

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

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

“measurement buoy” means any floating device used for measurement purposes, including LIDAR buoys and wave buoys;

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

“MMO” means the Marine Management Organisation;

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

“National Grid” means National Grid Electricity Transmission PLC;

“National Grid substation extension” means the extension to the existing 400kV Necton National Grid substation to provide a connection point to the 400kV grid network, including switchgear, circuit breakers and extension to existing busbar structures;

“noise sensitive location” means the location of the relevant Receptor Identifier SSR1–SSR11 in Table 25.27, Chapter 25 of the environmental statement;

“Norfolk Boreas Offshore Wind Farm” means the offshore wind farm authorised pursuant to this Order;

“Norfolk Vanguard Offshore Wind Farm” means the offshore wind farm for which Norfolk Vanguard Limited has sought a development consent order pursuant to an application submitted to the Secretary of State on 26th June 2018;

“Norfolk Vanguard East” means the eastern offshore area within which wind turbine generators will be situated for the Norfolk Vanguard Offshore Wind Farm;

“Norfolk Vanguard Onshore Project Substation” means any facility containing electrical equipment including (but not limited to) power transformers, switchgear, welfare facilities, access, fencing and other associated equipment, structures or buildings that may be built as part of the Norfolk Vanguard Offshore Wind Farm;

“offshore cable crossings” means the crossing of existing sub-sea cables or pipelines or other existing offshore infrastructure by the array, interconnecting and/or export cables and fibre optic cables authorised by this Order together with physical protection measures including concrete mattresses, rock placement or other protection methods;

“offshore electrical platform” means a platform attached to the seabed by means of a foundation, with one or more decks, whether open or fully clad, accommodating electrical

power transformers, switchgear, instrumentation, protection and control systems, and other associated equipment and facilities to enable the transmission of electronic communications and for electricity to be collected at, and exported from, the platform;

“offshore in principle monitoring plan” means the document certified as the offshore in principle monitoring plan by the Secretary of State for the purposes of this Order under article 37;

“offshore works” means Work Nos. 1 to 4B and any ancillary works in connection with those works;

“onshore decommissioning plan” means a plan to decommission Work No. 4C to Work No. 12B which includes a programme within which any works of decommissioning must be undertaken;

“onshore project substation” means a facility containing electrical equipment including (but not limited to) power transformers, switchgear, welfare facilities, access, fencing and other associated equipment, structures or buildings;

“offshore service platform” means a platform to house workers offshore and/or provide refuelling facilities and sheltering facilities for helicopters.

“onshore transmission works” means Work Nos. 4C to 12B and any related further associated development in connection with those works and ancillary works described in Schedule 1 Part 1 and Schedule 1 Part 2 respectively;

“OPS Masterplan” means the document certified as the OPS Masterplan by the Secretary of State for the purposes of article 37;

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

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

“outline access management plan” means the document certified as the outline access management plan by the Secretary of State for the purposes of this Order under article 37;

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of this Order under article 37;

“outline operational drainage plan” means the document certified as the outline operational drainage plan by the Secretary of State for the purposes of this Order under article 37;

“outline fisheries liaison and co-existence plan” means the document certified as the outline fisheries liaison and co-existence plan by the Secretary of State for the purposes of this Order under article 37;

“outline landscape and ecological management strategy” means the document certified as the outline landscape and ecological management strategy by the Secretary of State for the purposes of this Order under article 37;

“outline marine traffic monitoring strategy” means the document certified as the outline marine traffic monitoring strategy by the Secretary of State for the purposes of this Order under article 37;

“outline Norfolk Boreas, Haisborough, Hammond and Winterton Special Area of Conservation Cable Specification Installation and Monitoring Plan” means the document certified as the outline Norfolk Boreas Haisborough, Hammond and Winterton Special Area of Conservation Cable Specification, Installation and Monitoring Plan by the Secretary of State for the purposes of this Order under article 37;

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of this Order under article 37;

“outline project environmental management plan” means the document certified as the outline project environmental management plan by the Secretary of State for the purposes of this Order under article 37;

“outline scour protection and cable protection plan” means the document certified as the outline scour protection and cable protection plan by the Secretary of State for the purposes of this Order under article 37;

“outline skills and employment strategy” means the document certified as the outline skills and employment strategy by the Secretary of State for the purposes of this Order under article 37;

“outline traffic management plan” means the document certified as the outline traffic management plan by the Secretary of State for the purposes of this Order under article 37;

“outline travel plan” means the document certified as the outline travel plan by the Secretary of State for the purposes of this Order under article 37;

“outline written scheme of investigation (offshore)” means the document certified as the outline written scheme of investigation (offshore) by the Secretary of State for the purposes of this Order under article 37;

“outline written scheme of investigation (onshore)” means the document certified as the outline written scheme of investigation (onshore) by the Secretary of State for the purposes of this Order under article 37;

“overhead line modification” means alteration and repositioning of the overhead line, including removal of part of the overhead line, in respect of the existing Walpole to Norwich Main 400kV overhead line between pylons 4VV123 and 4VV127 on land north east of Necton, Norfolk to allow connection into the National Grid substation extension including connecting into the National Grid sealing end compound;

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(16);

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure steel jacket foundations;

“private means of access to be permanently stopped up plan” means the plan certified as the private means of access to be permanently stopped up plan by the Secretary of State for the purposes of this Order under article 37;

“relevant drainage authorities” means the drainage board for the area of land to which the relevant provision of this Order applies within the meaning of section 23 of the Land Drainage Act 1991(17);

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

“requirements” means, or a reference to a numbered requirement is to, those matters set out in Part 3 of Schedule 1 (requirements) to this Order;

“scenario 1” means the scenario in which the Norfolk Vanguard Offshore Wind Farm proceeds to construction and carries out enabling works including the laying of onshore cable ducts, to benefit the Norfolk Boreas Offshore Wind Farm;

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(16) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

(17) 1991 c. 59. Section 23 was amended by paragraph 192 of Schedule 22 to, the Environment Act 1995 c. 25, and by paragraph 32 of Schedule 2 to, the Flood and Water Management Act 2010 c. 29.

“scenario 2” means the scenario in which the Norfolk Vanguard Offshore Wind Farm does not proceed to construction and Norfolk Boreas Offshore Wind Farm is built out as an independent project including the laying of onshore cable ducts;

“scour protection” means measures to prevent loss of seabed sediment around any marine structure placed in or on the seabed by use of protective aprons, mattresses with or without frond devices, or rock and gravel placement;

“single offshore phase” means carrying out all offshore works as a single construction operation;

“single onshore phase” means a single duct laying operation (where relevant under scenario 2), one separate operation to pull the cables through the ducts and one separate operation to fit out the onshore project substation;

“stage” means a defined stage of the authorised development, as described in a scheme submitted to the relevant planning authority pursuant to requirement 15;

“statutory nature conservation body” means an organisation charged by government with advising on nature conservation matters;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and a public communications provider as defined in section 151 of the 2003 Act;

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

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

“suction caisson” means a large diameter steel cylindrical shell which penetrates the seabed assisted by a hydrostatic pressure differential for fixity of foundations;

“temporary stopping up of public rights of way plan” means the plan certified as the temporary stopping up of public rights of way plan by the Secretary of State for the purposes of this Order under article 37;

“tetrabase foundation” means a tripod shaped steel frame anchored under its own weight or through pin pile or suction bucket anchoring and associated materials and equipment including scour protection, J-tubes, transition piece, corrosion protection systems, fenders and maintenance equipment, boat access systems, access ladders and access and rest platform(s) and equipment;

“transition jointing pit” means an excavation formed to enable the jointing of the offshore export cables and fibre optic cables comprised in Work No. 4B to the onshore transmission works;

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

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

“trenchless installation techniques” means techniques for installing an underground duct between two points, without excavating and back-filling a trench;

“two offshore phases” means carrying out the offshore works as two separate construction operations;

“two onshore phases” means a single duct laying operation (where relevant under scenario 2), two separate operations to pull the cables through the ducts and two separate operations to fit out the onshore project substation;

“undertaker” means Norfolk Boreas Limited (Company No. 03722058) whose registered office is at 5th Floor, 70 St Mary Axe, London EC3A 8BE;

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

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

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

“wind turbine generator” means a structure comprising a tower, rotor with up to three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include (but is not limited to) corrosion protection systems, helicopter landing facilities and other associated equipment, fixed to a foundation; and

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of this Order under article 37;

(2) References in this Order to rights over land include references to rights to do or restrain or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over the land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or which is an interest otherwise comprised in the Order land.

(3) All distances, directions and lengths referred to in this Order are approximate, save in respect of the parameters referred to in:

- (a) paragraph (c) and paragraph (e) (disposal volumes in connection with Work Nos. 1 to 4B) under the heading “Further Associated Development” in Part 1, Schedule 1 (authorised development);
- (b) requirements 2 to 11 and requirement 16 in Part 3, Schedule 1 (requirements);
- (c) conditions 1-8 in Part 4 of the deemed marine licences for the generation assets (Schedules 9 and 10);
- (d) conditions 1-3 in Part 4 of the deemed marine licences for the transmission assets (Schedules 11 and 12); and
- (e) condition 2 in Part 4 of the deemed marine licences for the project interconnector assets (Schedule 13);

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

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

(6) The expression “includes” is to be construed without limitation unless the contrary intention appears.

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**Commencement Information**

**12** Art. 2 in force at 1.1.2022, see [art. 1](#)

## PART 2

### Principal Powers

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

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



- (a) development consent for the authorised development; and
  - (b) consent for the ancillary works,
- to be carried out within the Order limits.

(2) Subject to the requirements and conditions in the deemed marine licences, Work Nos. 1 to 4B must be constructed within the Order limits seaward of MHWS and Work Nos. 4C to 12B must be constructed within the Order limits landward of MHWS.

(3) Unless otherwise stated under Part 3 of Schedule 1, the requirements apply to scenario 1 and scenario 2.

**Commencement Information**

**I3** Art. 3 in force at 1.1.2022, see [art. 1](#)

**Limits of deviation**

**4.** In the event that the undertaker carries out the overhead line modification as part of Work No.11B the undertaker may—

- (a) deviate vertically from the levels of the existing 400kV overhead line from Walpole to Norwich Main to be modified as part of Work No.11B—
  - (i) to any extent not exceeding 4 metres upwards; or
  - (ii) to any extent downwards as may be found to be necessary or convenient.
- (b) deviate laterally from the lines or situations of the existing 400kV overhead line from Walpole to Norwich Main to be modified as part of Work No.11B
  - (i) to any extent not exceeding 25 metres either side of the existing overhead line as shown by the limits of deviation relating to that work on the works plan.

**Commencement Information**

**I4** Art. 4 in force at 1.1.2022, see [art. 1](#)

**Power to maintain authorised project**

**5.—(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) The power to maintain conferred under paragraph (1) does not relieve the undertaker of any requirement to obtain a licence under Part 4 of the 2009 Act (marine licensing) for offshore works not covered by the deemed marine licences.

**Commencement Information**

**I5** Art. 5 in force at 1.1.2022, see [art. 1](#)

**Benefit of the Order**

**6.—(1)** Subject to this article, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to paragraphs (4), (5) and (6), the undertaker may with the written consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (3) below) and such related statutory rights as may be agreed between the undertaker and the transferee; and
- (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 (excluding the deemed marine licences referred to in paragraph (3) below) and such related statutory rights as may be so agreed;

except where paragraph (10) applies, in which case no consent of the Secretary of State is required.

(3) Subject to paragraph (5), the undertaker may with the written consent of the Secretary of State—

- (a) where an agreement has been made in accordance with paragraph (2)(a), transfer to the transferee the whole of any of the deemed marine licences and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) where an agreement has been made in accordance with paragraph (2)(b), grant to the lessee, for the duration of the period mentioned in paragraph (2)(b), the whole of any of the deemed marine licences and such related statutory rights as may be so agreed;

except where paragraph (10) applies, in which case no consent of the Secretary of State is required.

(4) The undertaker must consult the Secretary of State before making an application for consent under this article by giving notice in writing of the proposed application.

(5) The Secretary of State shall consult the MMO before giving consent to the transfer or grant to another person of the whole of the benefit of the provisions of the deemed marine licences.

(6) The Secretary of State shall consult National Grid before giving consent to the transfer or grant to a person of any or all of the benefit of the provisions of this Order (excluding the deemed marine licences referred to in paragraph (3) above).

(7) Where an agreement has been made in accordance with paragraph (2) or (3) references in this Order to the undertaker, except in paragraph (8), (9), or <sup>F1</sup>(11), include references to the transferee or lessee.

(8) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) or (3) are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(9) Where an agreement has been made in accordance with paragraph (2) or (3)—

- (a) the benefit (“the transferred benefit”) includes any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit is not enforceable against the undertaker save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee.
- (c) the exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (2) or (3) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(10) The consent of the Secretary of State is required for the exercise of powers under paragraph (2) or (3) except where—

- (a) the transferee or lessee is a person who holds a licence under section 6 of the 1989 Act; or

- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
  - (i) no such claims have been made,
  - (ii) any such claim has been made and has been compromised or withdrawn,
  - (iii) compensation has been paid in final settlement of any such claim,
  - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation is payable.

(11) The provisions of article 9 (street works), article 11 (stopping up of streets), article 18 (compulsory acquisition of land), article 20 (compulsory acquisition of rights and the imposition of restrictive covenants), article 26 (temporary use of land for carrying out the authorised project) and article 27 (temporary use of land for maintaining the authorised project) have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and is also—

- (a) in respect of Work Nos. 4C to 12B a person who <sup>F2</sup>holds a licence under section 6 of the 1989 Act]; or
- (b) in respect of functions under article 9 (street works) relating to a street, a street authority.

(12) Prior to any transfer or grant under this article taking effect the undertaker must give notice in writing to the Secretary of State, and if such transfer or grant relates to the exercise of powers in their area, to the MMO and the relevant planning authority.

(13) A notice required under paragraphs (4) and (12) must—

- (a) state—
  - (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
  - (ii) subject to paragraph (14), the date on which the transfer will take effect;
  - (iii) the provisions to be transferred or granted; and
  - (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (9), will apply to the person exercising the powers transferred or granted; and
  - (v) except where paragraph (10)(a) or 10(b) applies, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
- (b) where relevant, be accompanied by—
  - (i) a plan showing the works or areas to which the transfer or grant relates; and
  - (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(14) The date specified under paragraph (13)(a)(ii) must not be earlier than the expiry of fourteen days from the date of the receipt of the notice.

(15) The notice given under paragraph (12) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(16) Section 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the benefit of the provisions of any of the deemed marine licences to another person by the undertaker pursuant to an agreement under this article.

**F1** [Art. 6\(7\)](#) bracket inserted (12.8.2022) by [The Norfolk Boreas Offshore Wind Farm \(Corrections\) Order 2022 \(S.I. 2022/901\)](#), art. 1(2), [Sch.](#)

**F2** Words in art. 6(11)(a) substituted (12.8.2022) by The Norfolk Boreas Offshore Wind Farm (Corrections) Order 2022 (S.I. 2022/901), art. 1(2), **Sch.**

**Commencement Information**

**I6** Art. 6 in force at 1.1.2022, see **art. 1**

**Application and modification of legislative provisions**

7.—(1) Regulation 6 of the Hedgerows Regulations 1997(**19**) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

“or

(k) for carrying out development which has been authorised by an order granting development consent pursuant to the Planning Act 2008.”.

(2) The provisions of the Neighbourhood Planning Act 2017(**20**) insofar as they relate to temporary possession of land under articles 26 (temporary use of land for carrying out the authorised project) and 27 (temporary use of land for maintaining the authorised project) of this Order 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.

(3) 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 2016 Regulations, to the extent that they require a permit for anything that would have required consent made 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 of the Water Resources Act 1991 that require consent or approval for the carrying out of works;
- (c) section 23 of the Land Drainage Act 1991(**21**) (prohibition of obstructions etc. in watercourses); and
- (d) the provisions of any byelaws made under section 66 of the Land Drainage Act 1991 (powers to make byelaws) that require consent or approval for the carrying out of works.

**Commencement Information**

**I7** Art. 7 in force at 1.1.2022, see **art. 1**

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

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**22**) (summary proceedings by persons aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order may be made, and no fine may be imposed, under section 82(2) of that Act if—

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(19) SI 1997/1160.

(20) 2017 c. 20.

(21) 1991 c. 59.

(22) 1990 c. 43. Section 82 was amended by section 107 and paragraph 6 of Schedule 17 to the Environment Act 1995 c. 25, section 5 of the Noise and Statutory Nuisance Act 1993 c. 40, and section 103 of the Clean Neighbourhood and Environment Act 2005 c. 16 and section 79 was amended by sections 101 and 102 of the Clean Neighbourhoods and Environment Act 2005 c. 16, and by section 120 and paragraph 89 of Schedule 22 to the Environment Act 2005. There are other amendments which are not relevant to the Order.

- (a) the defendant shows that the nuisance—
- (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites) of the Control of Pollution Act 1974(23); or
  - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
- (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with requirement 27 (control of noise during operational phase and during maintenance); or
  - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for purposes of or in connection with the construction or maintenance of the authorised project.

**Commencement Information**

**I8** Art. 8 in force at 1.1.2022, see [art. 1](#)

## 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 specified in Part 1 of Schedule 2 (streets subject to street works) in the event of scenario 1, or Part 2 of Schedule 2 (streets subject to street works) in the event of scenario 2, as is within the Order limits and may—

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

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

(23) 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 c. 43. There are other amendments to the 1974 Act which are not relevant to the Order.

(3) In this article “apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act.

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**Commencement Information**

**I9** Art. 9 in force at 1.1.2022, see [art. 1](#)

**Public rights of way**

**10.** The undertaker may, in connection with the carrying out of the authorised project, temporarily stop up each of the public rights of way specified in column (2) of Parts 1 and 2 of Schedule 3 (public rights of way to be temporarily stopped up) to the extent specified in column (3) of Part 1 of Schedule 3 in the event of scenario 1, or Part 2 of Schedule 3 in the event of scenario 2, by reference to the letters shown on the temporary stopping up of public rights of way plan.

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**Commencement Information**

**I10** Art. 10 in force at 1.1.2022, see [art. 1](#)

**Stopping up of streets**

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

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

(2) Without limiting paragraph (1), the undertaker may, during and for the purposes of carrying out the authorised project, use any street temporarily stopped up, diverted or altered 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, diversion or alteration 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, divert or alter the streets specified in column 2 of Part 1 of Schedule 4 (Streets to be temporarily stopped up (Scenario 1)) in the event of scenario 1, or column 2 of Part 2 of Schedule 4 (Streets to be temporarily stopped up (Scenario 2)) in the event of scenario 2, to the extent specified, by reference to the letters and numbers shown on the streets to be temporarily stopped up plan, in column (3) of Parts 1 and 2 of that Schedule.

(5) The undertaker must not temporarily stop up, divert, alter 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.

(6) 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) that street authority is deemed to have granted consent.

(7) In the event of scenario 1 the undertaker may, in connection with the carrying out of the authorised development, stop up the private means of access specified in columns (1) and (2) of Part 3 of Schedule 4 (permanent stopping up of private means of access for which a substitute is to be provided) to the extent specified, by reference to the letters and numbers shown on the private means

of access to be permanently stopped up plan, described in column (3) of that Schedule provided that—

- (a) the new private means of access, specified in column (4) Part 3 of Schedule 4, is constructed and substituted for it; or
  - (b) a temporary alternative route for the passage of such traffic as could have used the private means of access to be stopped up is first provided and subsequently maintained by the undertaker, between the commencement and termination points for the stopping up of the private means of access until the completion and opening of the new private means of access in accordance with paragraph (7)(a).
- (8) Where a private means of access has been stopped up under paragraph (7) of this article—
- (a) all rights of way over or along the private means of access so stopped up are extinguished; and
  - (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the private means of access as is bounded on both sides by land owned by the undertaker.

(9) 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 (determination of questions of disputed compensation) of the 1961 Act.

#### Commencement Information

**III** Art. 11 in force at 1.1.2022, see [art. 1](#)

### 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 specified in columns (1) and (2) of Part 1 of Schedule 5 (access to works) in the event of scenario 1, or columns (1) and (2) of Part 2 of Schedule 5 (access to works) in the event of scenario 2; and
- (b) with the approval of the relevant planning authority after consultation with the highway authority in accordance with requirement 22 (highway accesses), 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 relevant planning authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(b) that relevant planning authority is deemed to have granted approval.

#### Commencement Information

**III** Art. 12 in force at 1.1.2022, see [art. 1](#)

### Agreements with street authorities

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

- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order; or
- (b) the carrying out in the street of any of the works referred to in article 9(1) (street works).

- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

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**Commencement Information**

**I13** Art. 13 in force at 1.1.2022, see [art. 1](#)

**Application of the 1991 Act**

**14.**—(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
- (b) the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under article 11 (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>(24)</sup> are—
- (a) subject to paragraph (3), section 55 (notice of starting date of works);
  - (b) section 57 (notice of emergency works);
  - (c) section 60 (general duty of undertakers to co-operate);
  - (d) section 68 (facilities to be afforded to street authority);
  - (e) section 69 (works likely to affect other apparatus in the street);
  - (f) section 76 (liability for cost of temporary traffic regulation);
  - (g) section 77 (liability for cost of use of alternative route); and
  - (h) all provisions of that Act that apply for the purposes of the provisions referred to in subparagraphs (a) to (g).

(3) Sections 55 of the 1991 Act as applied by paragraph (2) has 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**

**I14** Art. 14 in force at 1.1.2022, see [art. 1](#)

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(24) Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004 c. 18.



## PART 4

### Supplemental Powers

#### Discharge of water and works to watercourses

**15.**—(1) Subject to paragraphs (3) and (4) below the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>(25)</sup> (right to communicate with public sewers).

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

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

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) The undertaker must 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.

(6) Nothing in this article overrides the requirement for an environmental permit under Regulation 12(1)(b) of the 2016 Regulations insofar as the discharge activity comes within the definition contained within the 2016 Regulations.

(7) Subject to paragraph (8) below, the undertaker may in connection with the carrying out or maintenance of the authorised project, alter the bed or banks of, and construct works in, under, over or within any watercourse and may divert, alter, interrupt or obstruct the flow of any watercourse within the Order limits.

(8) The undertaker must not:

(a) undertake any works within 8 metres of, any watercourse forming part of a river, or within 16 metres of a tidally influenced main river without the consent of the Environment Agency, which must not be unreasonably withheld but may be subject to reasonable conditions; and

(b) undertake any works to any ordinary watercourse without the consent of the relevant drainage authorities or Norfolk County Council as the case may be, which must not be unreasonably withheld but may be subject to reasonable conditions.

(9) In this article—

(a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, a relevant drainage authority or a local authority;

(b) “ordinary watercourse” has the meaning given in the Land Drainage Act 1991;

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<sup>(25)</sup> 1991 c. 56. Section 106 was amended by sections 35(8)(a) and 43(2) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 c. 43 and sections 36(2) and 99 of the Water Act 2003 c. 37 and section 32, and paragraph 16(1) of Schedule 3 to, the Flood and Water Management Act 2010 c. 29.

(c) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

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

#### Commencement Information

**I15** Art. 15 in force at 1.1.2022, see [art. 1](#)

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

**16.**—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised project and—

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

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

(3) The notice required under paragraph (2) must indicate the nature of the survey or investigation that the undertaker intends to carry out.

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

- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
- (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

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

- (a) in land forming a railway without the consent of Network Rail Infrastructure Limited; or
- (b) in land held by or in right of the Crown without the consent of the Crown.

(6) 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.

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

(8) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (5)(a) in the case of a highway authority; or
- (b) under paragraph (5)(b) in the case of a street authority;

that authority is deemed to have granted consent.

(9) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession 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 (application of compulsory acquisition provisions) of the 2008 Act.

#### **Commencement Information**

**I16** Art. 16 in force at 1.1.2022, see [art. 1](#)

#### **Removal of human remains**

**17.—**(1) In this article, “the specified land” means the land within the Order limits.

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

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

- (a) publishing a notice once in each of 2 successive weeks in a newspaper circulating in the area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

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

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

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

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

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

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

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
  - (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice, but the person who gave the notice fails to remove the remains within a further period of 56 days; or
  - (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
  - (d) it is determined that the remains to which any such notice relates cannot be identified,
- subject to paragraph (10), the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be re-interred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.
- (10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.
- (11) On the re-interment or cremation of any remains under this article—
- (a) a certificate of re-interment or cremation must be sent by the undertaker to the Registrar General giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
  - (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) must be sent by the undertaker to the relevant planning authority mentioned in paragraph (4).
- (12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.
- (13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.
- (14) Section 25 of the Burial Act 1857<sup>(26)</sup> (offence of removal of body from burial ground) does not apply to a removal carried out in accordance with this article.

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**Commencement Information**

**I17** Art. 17 in force at 1.1.2022, see [art. 1](#)

## PART 5

### Powers of Acquisition

#### Compulsory acquisition of land

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

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(26) 1857 c. 81.

(2) This article is subject to article 19 (time limit for exercise of authority to acquire land compulsorily), article 20 (compulsory acquisition of rights and the imposition of restrictive covenants), article 24 (acquisition of subsoil and airspace only), article 25 (rights under or over streets), article 26 (temporary use of land for carrying out the authorised project) and article 41 (Crown rights).

**Commencement Information**

**I18** Art. 18 in force at 1.1.2022, see [art. 1](#)

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

**19.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act (which makes provision for compulsory purchase under the Acquisition of Land Act 1981); and
- (b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 22 (application of the 1981 Act).

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised project) ceases at the end of the period referred to in paragraph (1), except that 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 was taken before the end of that period.

**Commencement Information**

**I19** Art. 19 in force at 1.1.2022, see [art. 1](#)

**Compulsory acquisition of rights and the imposition of restrictive covenants**

**20.**—(1) Subject to the provisions of this article, the undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this article, article 21 (private rights) and article 29 (statutory undertakers), in the case of the Order land specified in column (1) of Part 1 of Schedule 6 (land in which only new rights etc. may be acquired) in the event of scenario 1, or column (1) of Part 2 of Schedule 6 (land in which only new rights etc. may be acquired) in the event of scenario 2, the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of the relevant Part of that Schedule.

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

(4) Schedule 7 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 the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights under paragraphs (1) and (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.

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

**Commencement Information**

**I20** Art. 20 in force at 1.1.2022, see [art. 1](#)

**Private rights**

**21.**—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 18 (compulsory acquisition of land) are suspended and unenforceable or, where so notified by the undertaker to the person with the benefit of such private rights or restrictive covenants, extinguished in so far as in either case 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 (power of entry)

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 20 (compulsory acquisition of rights) 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 earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants 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 or restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act to be determined, in case of dispute, under Part 1 of the 1961 Act (determination of questions of disputed compensation).

(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 (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 the land,
- (iii) the undertaker’s entry onto the land, or
- (iv) the undertaker’s taking temporary possession of the land

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 the title was derived before or after the making of the agreement.

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

#### **Commencement Information**

**I21** Art. 21 in force at 1.1.2022, see [art. 1](#)

#### **Application of the 1981 Act**

**22.**—(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 1 (application of act), for subsection 2, substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(4) Section 5 (earliest date for execution of declaration) is omitted.

(5) Section 5A (time limit for general vesting declaration) is omitted<sup>(27)</sup>.

(6) In section 5B (extension of time limit during challenge)<sup>(28)</sup>—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Norfolk Boreas Offshore Wind Farm Order 2021”.

(7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 5 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) 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.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)<sup>(29)</sup>, for paragraph 1(2) substitute—

<sup>(27)</sup> Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 c. 22

<sup>(28)</sup> Inserted by section 202(2) of the Housing and Planning Act 2016 c. 22.

<sup>(29)</sup> Inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 c. 22.

“But see article 24(3) (acquisition of subsoil and airspace only) of the Norfolk Boreas Offshore Wind Farm Order 2021, which excludes the acquisition of subsoil and airspace only from this Schedule.”.

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 of the 2008 Act (as modified by article 23 (application of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order.

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**Commencement Information**

**I22** Art. 22 in force at 1.1.2022, see [art. 1](#)

**Application of Part 1 of the 1965 Act**

**23.**—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1) (extension of time limit during challenge)(**30**)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period specified in section 4” substitute “the five year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Norfolk Boreas Offshore Wind Farm Order 2021”.

(3) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 19 (time limit for exercise of authority to acquire land compulsorily) of the Norfolk Boreas Offshore Wind Farm Order 2021”

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**Commencement Information**

**I23** Art. 23 in force at 1.1.2022, see [art. 1](#)

**Acquisition of subsoil or airspace only**

**24.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) or article 20 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act, as modified by article 23 (application of Part 1 of the 1965 Act);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) Section 153(4A) (blighted land: proposed acquisition of part interest, material detriment test) of the 1990 Act.

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(30) Inserted by section 202(1) of the Housing and Planning Act 2016 c. 22.



(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory or airspace above a house, building or factory.

**Commencement Information**

**I24** Art. 24 in force at 1.1.2022, see [art. 1](#)

**Rights under or over streets**

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

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

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

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) 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 1.1.2022, see [art. 1](#)

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

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

- (a) enter on and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Part 1 of Schedule 8 (land of which temporary possession may be taken) in the event of scenario 1, or the land specified in columns (1) and (2) of Part 2 of Schedule 8 (land of which temporary possession may be taken) in the event of scenario 2, for the purpose specified in relation to that land in column (3) of the relevant Part of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;

- (c) construct temporary works (including the provision of means of access), running tracks, security fencing, bridges, structures and buildings on that land;
  - (d) use the land for the purposes of a working site with access to the working site in connection with the authorised project; and
  - (e) construct any works, or use the land, as specified in relation to that land in column 3 of Part 1 of Schedule 8 (land of which temporary possession may be taken) in the event of scenario 1, or column 3 of Part 2 of Schedule 8 in the event of scenario 2, or any mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 1.
- (2) 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.
- (3) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article
- (a) in the case of land specified in paragraph 1(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Part 1 of Schedule 8 (land of which temporary possession may be taken) in the event of scenario 1, or that land in column (4) of Part 2 of Schedule 8 in the event of scenario 2; or
  - (b) in the case of land specified in paragraph 1(a)(ii) after the end of the period of one year beginning with the date of completion of the part of the authorised project for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.
- (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 otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—
- (a) replace any building, structure, drain or electric line removed under this article;
  - (b) remove any drainage works installed by the undertaker under this article;
  - (c) remove any new road surface or other improvements carried out under this article to any street specified in Part 1 of Schedule 2 (streets subject to street works) in the event of scenario 1, or Part 2 of Schedule 2 (streets subject to street works) in the event of scenario 2; or
  - (d) restore the land on which any works have been carried out under paragraph (1) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 1.
- (5) The undertaker must pay compensation to the owners and occupiers of land which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—

- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 20 (compulsory acquisition of rights) to the extent that such land is listed in column (1) Part 1 of Schedule 6 (land in which new rights etc., may be acquired) in the event of scenario 1, or column (1) Part 2 of Schedule 6 (land in which new rights etc., may be acquired) in the event of scenario 2; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 24 (acquisition of subsoil or airspace only).

(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 (refusal to give possession to acquiring authority) 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 (application of compulsory acquisition provisions) of the 2008 Act.

**Commencement Information**

**I26** Art. 26 in force at 1.1.2022, see [art. 1](#)

**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, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; 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 is not required to comply with paragraph (3) in a case of emergency and if an emergency exists they must—

- (a) give to the owners and occupiers of the land in question notice of its intended entry or (as the case may be) of its having entered onto the land as soon as is reasonably practicable; and
- (b) comply with paragraph (1) so far as is reasonably possible in the circumstances.

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

(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.

(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 the provisions of 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 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 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 (7).

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

(11) Section 13 (refusal to give possession to acquiring authority) 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 (application of compulsory acquisition provisions).

(12) In this article "the maintenance period" means—

- (a) for the district of North Norfolk, the period referred to in requirement 19(2) in relation to the maintenance of landscaping;
- (b) in relation to any other part of the authorised project, means the period of 5 years beginning with the date on which the authorised project first exports electricity to the national electricity transmission network.

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**Commencement Information**

**I27** Art. 27 in force at 1.1.2022, see [art. 1](#)

**Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession**

**28.**—(1) This article applies to any Order land of which the undertaker takes temporary possession under article 26 (temporary use of land for carrying out the authorised project).

(2) Subject to paragraph (3), all private rights or restrictive covenants in relation to apparatus belonging to National Grid removed from any land to which this article applies will remain intact from the date on which the undertaker gives up temporary possession of that land.

(3) If the undertaker, in agreement with National Grid, gives notice before the date that the undertaker gives up temporary possession of the land that any or all of the private rights or restrictive covenants in relation to apparatus belonging to National Grid removed from the land to which this article applies will be extinguished, such rights will be extinguished.

(4) Any extinguishment of rights by paragraph (3) does not give rise to any cause of action relating to the presence on or in the land of any foundations and the undertaker is not required to remove foundations when giving up temporary possession).

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**Commencement Information**

**I28** Art. 28 in force at 1.1.2022, see [art. 1](#)

## Statutory undertakers

- 29.** Subject to the provisions of Schedule 17 (protective provisions) the undertaker may—
- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers within the Order land; and
  - (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

### Commencement Information

**I29** Art. 29 in force at 1.1.2022, see [art. 1](#)

## 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 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, 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 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) This article does not have effect in relation to apparatus to which Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this paragraph—

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

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

### Commencement Information

**I30** Art. 30 in force at 1.1.2022, see [art. 1](#)

## PART 6

### Operations

#### Operation of generating station

**31.—(1)** The undertaker is hereby authorised to operate the generating station comprised in the authorised project.

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

**Commencement Information**

**I31** Art. 31 in force at 1.1.2022, see [art. 1](#)

**Deemed marine licences under the 2009 Act**

**32.** The marine licences set out in Schedules 9, 10, 11, 12 and 13 are deemed to have been granted to the undertaker under Part 4 (marine licensing) of the 2009 Act for the licensed marine activities set out in Part 3 of each of those Schedules, and subject to the conditions set out in Part 4 of each of those Schedules.

**Commencement Information**

**I32** Art. 32 in force at 1.1.2022, see [art. 1](#)

## PART 7

### Miscellaneous and General

**Application of landlord and tenant law**

**33.—(1)** This article applies to—

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

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

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

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

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

**Commencement Information**

**I33** Art. 33 in force at 1.1.2022, see [art. 1](#)

**Operational land for purposes of the 1990 Act**

**34.** Development consent granted by this Order is 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 not being operational land).

**Commencement Information**

**I34** Art. 34 in force at 1.1.2022, see [art. 1](#)

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

**35.—**(1) Subject to article 35 (trees subject to tree preservation orders), the undertaker may fell or lop or cut back any roots of any tree or shrub near any part of the authorised project, 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 do no 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 (determination of questions of disputed compensation) of the 1961 Act.

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

- (a) remove any hedgerows within the Order limits and specified in Part 2 of Schedule 14 (Hedgerows) in the event of scenario 1 (scenario 1 - removal of hedgerows) and Part 5 of Schedule 14 (Hedgerows) in the event of scenario 2 (scenario 2 - removal of hedgerows) and those hedgerows that, after assessment, are not classed as important hedgerows specified in Part 4 of Schedule 14 (Hedgerows) (scenario 2 - removal of potentially important hedgerows); and
- (b) remove the important hedgerows as are within the Order limits and specified in Part 1 of Schedule 14 (Hedgerows) in the event of scenario 1 (scenario 1 - removal of important hedgerows), and Part 3 of Schedule 14 (Hedgerows) in the event of scenario 2 (scenario 2 - removal of important hedgerows) and those hedgerows that, after assessment, are classed as important hedgerows specified in Part 4 of Schedule 14 (Hedgerows) (scenario 2 - removal of potentially important hedgerows).

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerow Regulations 1997(31).

**Commencement Information**

**I35** Art. 35 in force at 1.1.2022, see [art. 1](#)

### Trees subject to tree preservation orders

**36.**—(1) Subject to paragraph (2), the undertaker must not fell or lop or cut back the roots of any tree within or overhanging land within the Order limits which is the subject of a tree preservation order.

(2) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made after 28 February 2017 or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

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

- (a) the undertaker must do no unnecessary damage to any tree 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) (replacement of trees) of the 1990 Act does not apply.

(4) The authority given by paragraph (2) constitutes a deemed consent under the relevant tree preservation order.

(5) Any dispute as to a person's entitlement to compensation under paragraph (3), or as to the amount of compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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#### Commencement Information

**I36** Art. 36 in force at 1.1.2022, see [art. 1](#)

### Certification of plans etc

**37.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the documents listed in Schedule 18 (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.

(3) Where a plan or document certified under paragraph (1)—

- (a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and
- (b) identifies that provision by a number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

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#### Commencement Information

**I37** Art. 37 in force at 1.1.2022, see [art. 1](#)

### Arbitration

**38.**—(1) Subject to article 41 (saving provisions for Trinity House), any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration



in accordance with the rules at Schedule 15 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.

**Commencement Information**

**I38** Art. 38 in force at 1.1.2022, see [art. 1](#)

**Procedure in relation to certain approvals etc**

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

(2) Schedule 16 (procedure for discharge of requirements) has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements 13, 14, 16, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34 and 35 in Part 3 of Schedule 1 (requirements).

**Commencement Information**

**I39** Art. 39 in force at 1.1.2022, see [art. 1](#)

**Abatement of works abandoned or decayed**

**40.** Where Work Nos. 1(a) to (f) or Work No. 2 or any part of those works is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense to repair and restore or remove Work Nos. 1(a) to (f) or Work No. 2 or any relevant part of those works and, without prejudice to any notice served under section 105(2) of the 2004 Act(**32**), to restore the site of the relevant part(s) of Work Nos. 1(a) to (f) or Work No. 2 to a safe and proper condition within an area and to such an extent as may be specified in the notice.

**Commencement Information**

**I40** Art. 40 in force at 1.1.2022, see [art. 1](#)

**Saving provisions for Trinity House**

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

(32) Section 105(2) was substituted by section 69(3) of the Energy Act 2008 c. 32.

### Commencement Information

**I41** Art. 41 in force at 1.1.2022, see [art. 1](#)

### Crown rights

**42.**—(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 for the compulsory acquisition of an interest in any land which is Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

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

### Commencement Information

**I42** Art. 42 in force at 1.1.2022, see [art. 1](#)

### Service of Notices

**43.**—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (6) to (9), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978( ) (references to service by post) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having an interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is to be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

.....  
**Commencement Information**

**I43** Art. 43 in force at 1.1.2022, see [art. 1](#)

**Protective provisions**

**44.** Schedule 17 (protective provisions) has effect.

.....  
**Commencement Information**

**I44** Art. 44 in force at 1.1.2022, see [art. 1](#)

**Compensation to protect the coherence of the national site network**

**45.** Schedule 19 (compensation to protect the coherence of the national site network) has effect.

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**Changes to legislation:** There are currently no known outstanding effects for the The  
Norfolk Boreas Offshore Wind Farm Order 2021. (See end of Document for details)

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**Commencement Information**

**I45** Art. 45 in force at 1.1.2022, see [art. 1](#)

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

*Gareth Leigh*  
Head of Energy Infrastructure Planning  
Department for Business, Energy & Industrial  
Strategy

**Changes to legislation:**

There are currently no known outstanding effects for the The Norfolk Boreas Offshore Wind Farm Order 2021.