
STATUTORY INSTRUMENTS

2014 No. 1873

The Rampion Offshore Wind Farm Order 2014

Citation and commencement

1. This Order may be cited as the Rampion Offshore Wind Farm Order and shall come into force on 6th August 2014.

Interpretation

2.—(1) In this Order—

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

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

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

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

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- (1) 1961 c. 33. Sections 1 and 4 were amended by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Sections 2 and 3 were repealed by that Order. There are other amendments to the 1961 Act which are not relevant to this Order.
- (2) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by section 67 of the Planning and Compensation Act 1991 (c. 34); section 80 of, and Part 2 of Schedule 18 to, that Act make provisions in respect of interest payable on compensation. Subsection (1) of section 11 and sections 31 and 32 were amended, and section 30 was substituted, by section 34(1) of, and Schedule 4, to, the Acquisition of Land Act 1981 (c. 67), and sections 11(1) and 31 were also amended by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1). Section 12 was amended by section 56(2) of, and Part 1 to Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 4 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to the Planning and Compensation Act 1991. There are other amendments to the 1965 Act which are not relevant to this Order.
- (3) 1980 c. 66. Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 (c. 22); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted, and section 1(3) was amended, by section 259(1), (2) and (3) of the Greater London Authority Act 1999 (c. 29); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 (c. 71), by S.I. 2006/1177, by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11), by section 64(1), (2) and (3) of the Transport and Works Act 1992 (c. 42) and by section 57 of, and paragraph 5 of Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c. 37); section 36(3A) was inserted by section 65(5) of the Transport and Works Act 1992 and was amended by S.I. 2006/1177; section 36(6) was amended by section 8 of, and paragraph 7 of Schedule 4 to, the Local Government Act 1985 (c. 51); and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994 (c. 19). Section 329 was amended by section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15). There are other amendments to the 1980 Act which are not relevant to this Order.
- (4) 1981 c. 66. Sections 2(3), 6(2) and 11(6) were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11). Section 15 was amended by sections 56 and 321(1) of, and Schedules 8 and 16 to, the Housing and Regeneration Act 2008 (c. 17). Paragraph 1 of Schedule 2 was amended by section 76 of, and Part 2 of Schedule 9 to, the Housing Act 1988 (c. 50); section 161(4) of, and Schedule 19 to, the Leasehold Reform, Housing and Urban Development Act 1993 (c. 28); and sections 56 and 321(1) of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 3 of Schedule 2 was amended by section 76 of, and Schedule 9 to, the Housing Act 1988 and section 56 of, and Schedule 8 to, the Housing and Regeneration Act 2008. Paragraph 2 of Schedule 3 was repealed by section 277 of, and Schedule 9 to, the Inheritance Tax Act 1984 (c. 51). There are amendments to the 1981 Act which are not relevant to this Order.

- “the 1990 Act” means the Town and Country Planning Act 1990(5);
- “the 1991 Act” means the New Roads and Street Works Act 1991(6);
- “the 2004 Act” means the Energy Act 2004(7);
- “the 2008 Act” means the Planning Act 2008;
- “the 2009 Act” means the Marine and Coastal Access Act 2009(8);
- “access land” has the same meaning as in Part 1 of the Countryside and Rights of Way Act 2000(9);
- “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;
- “ancillary works” means the ancillary works described in Part 2 of Schedule 1 (ancillary works) and which are not development within the meaning of section 32 of the 2008 Act;
- “approval authority” means a person or body that is responsible for approving details pursuant to a requirement in Part 3 of Schedule 1 (requirements);
- “array” means Work Nos. 1 and 2;
- “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 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;
- “cable ducts” means conduits for the installation of cables;
- “carriageway” has the same meaning as in the 1980 Act;
- “circuit” means up to three cables installed inside separate cable ducts, which are grouped together in a trefoil arrangement;
- “commence”, unless otherwise provided for, means—
- (a) in relation to works seaward of MHWS, beginning to carry out any licensed marine activities authorised by the deemed marine licences other than pre-construction surveys or monitoring;
 - (b) in respect of any other works comprised in the authorised project, any material operation (as defined in section 56(4) of the 1990 Act) forming part of the authorised project other than operations consisting of site clearance (excluding stripping of soil and the removal of trees and hedgerows), demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in

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- (5) 1990 c. 8. Section 56(4) was amended by section 32 of, and paragraph 10(2) of Schedule 7 to, the Planning and Compensation Act 1991 (c. 34). Section 106 was substituted, and section 106A inserted, by section 12(1) of the Planning and Compensation Act 1991. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the 2008 Act. Sections 272 to 274 and section 279 were amended by section 406(1) of, and paragraph 103 of Schedule 17 to, the Communications Act 2003 c. 21, and section 280 was amended by section 406(1) of, and paragraph 104 of Schedule 17. to, that Act. Functions under sections 272 to 274 were transferred by S.I. 2011/741 and S.I. 2012/2590. Section 282 was amended by S.I. 2009/1307. There are other amendments to the 1990 Act which are not relevant to this Order.
 - (6) 1991 c. 22. Section 48(3A) was inserted by section 124 of the Local Transport Act 2008 (c. 26). Sections 80(4), and 83(3) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
 - (7) 2004 c. 20. Section 105 was amended by section 69 of the Energy Act 2008 (c. 32).
 - (8) 2009 c. 23.
 - (9) 2000 c.37. Section 1 was amended by sections 301 and 321 of, and Part 7 of Schedule 22 to, the Marine and Coastal Access Act 2009, sections 52 and 53 of, and Schedules 5 and 6 to, the Commons Act 2000 (c.26) and by S.I. 2010/558, There are other amendments to the Act not relevant to this Order.

respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements,

and “commencement” shall be construed accordingly;

“connection works” means Work Nos. 3B to 32 and any related further associated development including, in relation to cable laying, jointing bays, manholes, marker posts and other works associated with cable laying;

“construction compound” means a secure construction site associated with the connection works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“construction laydown area” means a temporary secure storage area associated with the connection works that is moveable and positioned at locations along the working width, for materials, plant and equipment, which may include vehicle parking, wheel washing facilities and mobile units comprising access control room and welfare facilities;

“deemed array marine licence” means the licence set out in Schedule 13 (deemed licence under the Marine and Coastal Access Act 2009 – array) and deemed by article 11 (deemed marine licences under the Marine and Coastal Access Act 2009) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“deemed export cables marine licence” means the licence set out in Schedule 14 (deemed licences under the Marine and Coastal Access Act 2009 – export cables) and deemed by article 11 (deemed marine licence under the Marine and Coastal Access Act 2009) to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

“deemed marine licences” means one or both of the deemed array marine licence and the deemed export cables marine licence;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order and submitted with the application on 1 March 2013;

“European protected species” has the same meaning as in regulations 40 and 44 of the Conservation of Habitats and Species Regulations 2010(10);

“export cables”, except where otherwise provided for, means Work No. 3A;

“footpath stopping up and diversion plan” means the plan certified as the footpath stopping up and diversion plan by the Secretary of State for the purposes of this Order;

“gravity base foundation” means a structure principally of concrete, steel or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or skirts, including associated sea bed preparation, scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side and work platforms and equipment;

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

“horizontal directional drilling compound” means a secure construction site associated with the connection works where horizontal directional drilling is proposed including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, wheel washing facilities, workshop facilities and temporary

(10) S.I. 2010/490, amended by S.I. 2011/625 and S.I. 2012/1927. There are other amending instruments not relevant to this Order.

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

“horizontal directional drilling exit compound” means a secure construction site associated with the connection works at the exit point where horizontal directional drilling is proposed including hard standings, lay down and storage areas for construction materials and equipment, areas for temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“Hydrographic Office” means the United Kingdom Hydrographic Office of Admiralty Way, Taunton, Somerset, TA1 2DN;

“IBGS foundation” means an Inward Battered Guide Structure foundation, a jacket-type concrete, steel or steel and concrete structure which is pre-fabricated with three tubular raking legs, which is installed over a pre-driven central pile, with up to three smaller diameter raking piles driven through the legs to pin the foundation to the seabed, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

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

“jacket foundation” means a jacket/lattice type structure constructed of concrete, steel or steel and concrete which is fixed to the seabed at three or more points with driven or pre-installed piles or suction cans, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

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

“LAT” means lowest astronomical tide;

“maintain”, unless otherwise provided for, includes inspect, repair, adjust and alter, and further includes remove, reconstruct and replace any of the ancillary works and any component part of any wind turbine generator or offshore substation described in Part 1 of Schedule 1 (authorised development) to the extent assessed in the environmental statement, and “maintenance” and related expressions shall be construed accordingly;

“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;

“measures of success for discharge of requirements” means the document certified as the measures of success for discharge of requirements by the Secretary of State for the purposes of this Order;

“MMO” means the Marine Management Organisation;

“monopile foundation” means a steel, concrete, or steel and concrete large diameter pile, typically cylindrical, driven and/or drilled into the seabed, including associated scour protection, transition piece, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

“offshore substation” means an offshore platform constructed of steel or concrete or steel and concrete with single or multiple decks housing major electrical equipment including high voltage transformers, switchgear, control rooms, cabling and busbars, lightning protection masts, communications masts, cable management, back-up generators, fuel storage,

emergency accommodation, workshops and stores, helihoist facilities, cranes and other associated electrical and ancillary equipment;

“onshore substation” means an onshore substation facility accommodated within a compound containing electrical equipment including high voltage transformers, switchgear, reactive compensation equipment, harmonic filters, cables, lightning protection masts, control buildings, communications masts, back-up generators, fuel storage, access roads, car parking and hardstanding, fencing and other associated equipment and structures;

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

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

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

“Order limits”, unless otherwise provided for, 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);

“outline arboricultural method statement” means the document certified as the outline arboricultural method statement by the Secretary of State for the purposes of this Order;

“outline cable specification and installation plan” means the document certified as the outline cable specification and installation plan by the Secretary of State for the purposes of this Order;

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

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

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

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

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

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

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

“outline offshore written scheme of archaeological investigation” means the document certified as the outline offshore written scheme of archaeological investigation by the Secretary of State for the purposes of this Order;

“outline onshore written scheme of archaeological investigation” means the document certified as the outline onshore written scheme of archaeological investigation by the Secretary of State for the purposes of this Order;

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

“owner”, in relation to land, has the same meaning as in Section 7 of the Acquisition of Land Act 1981(11);

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

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

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

“relevant highway authority” means West Sussex County Council;

“relevant planning authority” means the authority as specified in requirements 9 to 41, being West Sussex County Council, the South Downs National Park Authority or Mid Sussex District Council;

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

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act;

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

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

“suction can” means a steel cylindrical structure which is fixed to the base of the foundation and partially penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential;

“suction caisson foundation” means a large diameter steel cylindrical structure which partially penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential, attached to a vertical central column which supports the transition piece, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access platform(s) and equipment;

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

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

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

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

“tripod foundation” means a steel or concrete or steel and concrete jacket/lattice type structure consisting of three main legs linked by cross-braces supporting a single central support for the transition piece which is fixed to the seabed with driven or pre-installed piles or suction cans, including associated scour protection, J-tubes, corrosion protection systems, boat landings comprising an access ladder with vertical boat fenders fitted either side, access and work platforms and equipment;

“undertaker” means E.ON Climate & Renewables UK Rampion Offshore Wind Limited;

“vessel” includes every description of vessel, however propelled or moved, and includes a jack-up barge, floating crane, 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;

(11) 1981 c. 67. The definition of ‘owner’ in 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.

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

“wind turbine generator” or “WTG” means a structure comprising a tower, rotor with three horizontal axis blades connected at the hub, nacelle containing mechanical and electrical equipment, ancillary equipment including access ladders and platforms, lifts, cables, corrosion protection systems, maintenance equipment, helihoist facilities and other associated equipment, fixed to a foundation;

“working width” means the construction width of the onshore cable corridor including haul route, spoil storage and temporary drainage during installation of circuits and/or cable ducts; and

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

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

(3) All distances, directions and lengths referred to in this Order are approximate, save in respect of the parameters referred to requirements 2 to 5 and 10, conditions 1 to 4 in Part 2 of the deemed array marine licence and condition 1 in Part 2 of the deemed export cables marine licence.

(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 Part 1 of Schedule 1 to this Order, except that references to Works No.1 to 3A in Schedules 13 and 14 shall be construed in accordance with the provisions of those Schedules.

(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.

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, Work Nos. 1 to 3A shall be constructed anywhere within the Order limits seaward of MHWS and Work Nos. 3B to 32 shall be constructed anywhere within the Order limits landward of MLWS.

Power to maintain authorised project

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

Operation of electricity generating station

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

(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.

Requirements, appeals etc

6.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by a requirement, the following provisions apply, so far as they relate to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission, as if the requirement was such a condition—

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

(2) For the purposes of paragraph (1), a provision relates to a consent, agreement or approval of a local planning authority required by a condition imposed on a grant of planning permission in so far as it makes provision in relation to an application for such a consent, agreement or approval, or the grant or refusal of such an application, or a failure to give notice of a decision on such an application.

Benefit of the Order

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

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraph (7), shall include references to the transferee or lessee.

(3) The undertaker may with the written consent of the Secretary of State—

- (a) where an agreement has been made in accordance with paragraph (1)(a), transfer to the transferee the whole of the deemed array marine licence and/or the whole of the deemed export cable marine licence 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 (1)(b), grant to the lessee, for the duration of the period mentioned in paragraph (1)(b), the whole of the deemed array marine licence and/or the whole of the deemed export cable marine licence and such related statutory rights as may be so agreed.

(4) 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.

(5) Where the undertaker has transferred any benefit and/or a deemed marine licence, or for the duration of any period during which the undertaker has granted any benefit and/or a deemed marine licence under paragraph (1) or (3)—

- (a) the benefit and/or a deemed marine licence transferred or granted (“the transferred benefit”) shall include any rights that are conferred, and any obligations that are imposed by virtue of the provisions to which the benefit relates;
- (b) the transferred benefit shall reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit shall not be enforceable against the 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 or lessee.

(6) The provisions of article 15 (street works), article 16 (temporary stopping up of streets), article 23 (compulsory acquisition of land), article 25 (compulsory acquisition of rights), article 31 (temporary use of land for carrying out the authorised project) and article 32 (temporary use of land for maintaining the authorised project) shall 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. 3B to 32 a person who holds a licence under the Electricity Act 1989⁽¹²⁾, or

(b) in respect of functions under article 15 (street works) relating to a street, a street authority.

(7) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (3) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

Application and modification of legislative provisions

8. Regulation 6 of the Hedgerows Regulations 1997⁽¹³⁾ shall be modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j)—

“or;

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

Public rights of navigation

9.—(1) Subject to paragraph (2), the rights of navigation over the places in the sea where any of the wind turbine generators and offshore substations, including their foundations, are located within territorial waters, shall be extinguished.

(2) The extinguishment of the rights of navigation over the places identified in paragraph (1) shall take effect 14 days after the undertaker has submitted a plan to the Secretary of State showing the precise locations of the foundations of each of any relevant wind turbine generators and offshore substations to be constructed as part of the authorised development within territorial waters.

(3) In respect of the location of any individual wind turbine generator or offshore substation, paragraph (1) shall cease to have effect as soon as that wind turbine generator or offshore substation has been decommissioned and permanently removed, and the relevant rights of navigation shall resume.

(4) The plan submitted in accordance with paragraph (2) shall be published by the undertaker as required by the Secretary of State.

Abatement of works abandoned or decayed

10.—(1) Where the array or any part of it is abandoned or allowed to fall into decay the Secretary of State may by notice in writing require the undertaker at its own expense either to repair and restore or remove the array or any relevant part, and restore the site of the relevant part to a safe and proper condition, within an area and to such an extent as may be specified in the notice.

(2) In circumstances where the undertaker is required to remove the array, without prejudice to any obligations on the undertaker deriving from any notice served under section 105(2) of the 2004 Act, the notice may also require the restoration of the site of the relevant part of the array to a safe and proper condition within such area and to such an extent as may be specified in the notice.

(12) 1989 c.29. Section 6 was substituted by section 30 of the Utilities Act 2000, and amended by sections 89, 136, 143, 145 and 197 of, and Schedule 19 and Part 1 of Schedule 23 to, the Energy Act 2004, section 79 of, and Schedule 8 to, the Climate Change Act 2008, section 72 of, and Schedule 1 to, the Energy Act 2011, and S.I. 2011/2704 and S.I. 2012/2004

(13) (S.I. 1997/1160).

(3) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, the Secretary of State may take whatever steps the Secretary of State considers appropriate to achieve the result required by the notice; and any expenditure incurred by the Secretary of State in doing so shall be recoverable from the undertaker.

Deemed marine licences under the Marine and Coastal Access Act 2009

11. The deemed array marine licence and the deemed export cables marine licence are deemed to be granted to the undertaker under Part 4 of Chapter 1 of the 2009 Act, subject to the conditions set out in Part 2 of Schedule 13 (deemed licence under Marine and Coastal Access Act 2009 – array) and Part 2 of Schedule 14 (deemed licence under Marine and Coastal Access Act 2009 – export cables) respectively.

Saving for Trinity House

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

Crown rights

13.—(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—

- (a) to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—
 - (i) belonging to Her Majesty in right of the Crown and forming part of The Crown Estate without the consent in writing of the Crown Estate Commissioners;
 - (ii) belonging to Her Majesty in right of the Crown and not forming part of The Crown Estate without the consent in writing of the government department having the management of that land; or
 - (iii) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department; or
- (b) to exercise any right under this Order compulsorily to acquire an interest in any land which is Crown land which is for the time being held otherwise than by or on behalf of the Crown without the consent in writing of the appropriate Crown authority.

(2) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions.

Defence to proceedings in respect of statutory nuisance

14.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**14**)(summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) no order shall be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—

(14) 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

- (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 site), or a consent given under section 61 (prior consent for work on construction site) or section 65 (noise exceeding registered level), of the Control of Pollution Act 1974⁽¹⁵⁾; 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 accordance with a scheme of monitoring and attenuation of noise to be agreed with West Sussex County Council under requirement 35 (control of noise during operational phase); or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall 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.

Street works

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

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

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

(3) The provisions of sections 54 to 106 of the 1991 Act apply to any street works carried out under paragraph (1).

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

(5) All works to and beneath the A27 trunk road shall be designed and constructed in accordance with the Design Manual for Roads and Bridges.

⁽¹⁵⁾ 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the [Environmental Protection Act 1990](#), c. 43. There are other amendments to the 1974 Act which are not relevant to this Order.

Temporary stopping up of streets

16.—(1) Subject to paragraphs (2) and (3), the undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street within the Order limits and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (2), prevent all persons from passing along the street.

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

(3) The undertaker shall not temporarily stop up, alter or divert any street without the consent of the street authority which may attach reasonable conditions to any consent.

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

Public rights of way

17.—(1) Subject to paragraph (2), the undertaker may, in connection with the carrying out of the authorised project, extinguish the section of the public right of way (being a footpath) specified in columns (1) to (2) of Schedule 3 (footpath to be permanently stopped up) to the extent specified in column (3), by reference to the letters shown on the footpath stopping up and diversion plan.

(2) The public right of way specified in paragraph (1) shall not be extinguished under this article unless the new footpath specified in column (4) of Schedule 3 and on the footpath stopping up and diversion plan is first provided by the undertaker, to the reasonable satisfaction of the relevant highway authority.

(3) 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 Schedule 4 (rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the letters shown on the public rights of way temporary closure plan.

Access to works

18. 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 location specified in columns (1) and (2) of Schedule 5 (access to works); and
- (b) with the approval of West Sussex County Council or, where access is directly to or from a trunk road, the Secretary of State for Transport, 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.

Agreements with street authorities

19.—(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 15(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.

Discharge of water

20.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, 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) shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(16) (right to communicate with public sewers).

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

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

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

(5) The undertaker shall not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river without the prior consent of the Environment Agency.

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

(7) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by regulation 12 of the Environmental Permitting (England and Wales) Regulations 2010(17).

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991, have the same meaning as in that Act.

Authority to survey and investigate the land

21.—(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;

(16) (1991 c. 56. Section 6 was amended by sections 36(2) and 101(1) of, and by Schedule 8 to, the Water Act 2003 (c.37); section 102 was amended by sections 96(1) and 101(2) of, and Part 3 of Schedule 9 to, that Act; section 104 was amended by section 96(4) of the Water Act 2003 and by section 42(3) of the Flood and Water Management Act 2010 (c.29); section 106 was amended by sections 36(2) and 99 of the Water Act 2003, sections 35, 43(2) and 56(7) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c.43), and section 32 of, and paragraph 16(2) of Schedule 3 to, the Flood and Water Management Act 2010. There are other amendments to this Act which are not relevant to this Order.

(17) (S.I. 2010/675, as amended by (S.I. 2011/2043, S.I. 2011/2933, S.I. 2012/630, S.I. 2012/811, S.I. 2013/390, S.I. 2013/755, S.I. 2013/2952 and S.I. 2014/955.

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

Temporary suspension of public access to access land

- 22.**—(1) This provision applies to the access land described in Schedule 6 (temporary suspension of public access to access land).
- (2) The undertaker may, in connection with the authorised project temporarily—
- (a) interfere with such parts of the access land as are affected by the authorised project by constructing or maintaining the connection works as the undertaker considers necessary or expedient; and
 - (b) close to the public such parts of the access land as are affected by the authorised project during construction or maintenance of the connection works.
- (3) No fewer than 28 days before exercising any power under paragraph (2), the undertaker shall notify the South Downs National Park Authority of its intention to exercise such powers.
- (4) During the period of any closure referred to in paragraph (2)(b), all rights of access to the public shall be suspended.
- (5) The power conferred by paragraph (2) shall be exercised in a way which secures—
- (a) that no more of the relevant part of the access land is closed to the public at any time than is necessary in the circumstances; and

- (b) that all reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction or interference is caused to the public which may be intending to use the part so closed.

(6) As soon as practicable following the exercise of any powers under paragraph (2), any temporary works, plant, machinery and fencing shall be removed and access to the access land shall be restored.

Compulsory acquisition of land

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

(2) This article is subject to paragraph (2) of article 25 (compulsory acquisition of rights) and paragraph (8) of article 31 (temporary use of land for carrying out the authorised project).

Time limit for exercise of authority to acquire land compulsorily

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

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the 1981 Act as applied by article 27 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 31 (temporary use of land for carrying out the authorised project) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Compulsory acquisition of rights

25.—(1) The undertaker may acquire compulsorily such rights over the Order land or impose such restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 23 (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 26 (private rights), article 31 (temporary use of land for carrying out the authorised project), article 32 (temporary use of land for maintaining the authorised project) and article 33 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 7 (land in which only new rights etc may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights or the imposition of restrictive covenants affecting the land for the purpose specified in relation to that land in column (2) of that Schedule.

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

(4) Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants) shall have effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory 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.

Private rights

26.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order shall be extinguished—

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights under this article (and including those lands included in column (1) of Schedule 7 (land in which only new rights etc may be acquired)) shall be extinguished in so far as their continuance would be inconsistent with the exercise of the right—

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

whichever is the earliest.

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

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

(5) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc) or article 33 (statutory undertakers) applies.

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

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

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

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

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

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

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

27.—(1) The 1981 Act shall apply as if this Order were a compulsory purchase order.

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

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

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

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

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

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

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

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

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

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

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

(8) References to the 1965 Act in the 1981 Act shall be construed as references to that Act as applied by section 125 of the 2008 Act.

Acquisition of subsoil only

28.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 23 (compulsory acquisition of land) or article 25 (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 of the land under paragraph (1), the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 29 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of part of certain properties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Rights under or over streets

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

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

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

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

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

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

Temporary use of land for carrying out the authorised project

31.—(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 Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;

- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised project; and
 - (e) construct any works, or use the land as specified in relation to that land in column 3 of Schedule 9 (land of which temporary possession may be taken), or carry out any mitigation works.
- (2) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 9 (land of which temporary possession may be 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) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.
- (5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (7) Nothing in this article shall affect any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker shall not be precluded from—
- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 25 (compulsory acquisition of rights); or
 - (b) acquire any part of the subsoil (or rights in the subsoil) of that land under article 28 (acquisition of subsoil only).
- (9) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it.
- (10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining the authorised project

- 32.**—(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) shall not authorise the undertaker to take temporary possession of—

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

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

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

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

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

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

(8) Nothing in this article shall affect any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) In this article "the maintenance period", in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project first exports electricity to the national electricity transmission network.

Statutory undertakers

33. Subject to the provisions of Schedule 12 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the limits of the land to be acquired and described in the book of reference;
- (b) extinguish or relocate the rights of, or remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Recovery of costs of new connections

34.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 33 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 33 (statutory undertakers), any person who is—

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

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

(3) This article shall not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(18); and

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

Application of landlord and tenant law

35.—(1) This article applies to—

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

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

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

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

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

Operational land for purposes of the 1990 Act

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

Felling or lopping of trees and removal of hedgerows

37.—(1) Subject to requirement 11 (provision of landscaping), requirement 28 (ecological and landscape management plan), requirement 29 (ecological and landscape management plan for the South Downs National Park), requirement 37 (European protected species onshore) and requirement 38 (European protected species within the South Downs National Park), the undertaker may fell or lop any tree or shrub within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

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

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

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

(a) subject to requirement 11 (provision of landscaping) and paragraph (2) above, remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised project; and

(b) remove the important hedgerows as are within the Order limits and specified in Schedule 10 (important hedgerows).

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

Trees subject to tree preservation orders

38.—(1) Subject to requirement 28 (ecological and landscape management plan), requirement 29 (ecological and landscape management plan for the South Downs National Park), requirement 37 (European protected species onshore) and requirement 38 (European protected species within the South Downs National Park), the undertaker may fell or lop any tree described in Schedule 11 (trees subject to tree preservation orders) and identified on the tree preservation order plan, or cut back its roots if it reasonably believes it to be necessary in order 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)—

(a) the undertaker shall do no unnecessary damage to any tree or shrub and shall pay compensation to any person for any loss or damage arising from such activity; and

(b) the duty contained in section 206(1) of the 1990 Act (replacement of trees) shall not apply.

(3) The authority given by paragraph (1) shall constitute a deemed consent under the relevant tree preservation order.

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

Procedure in relation to further approvals, etc

39.—(1) In this article—

“competent authority” means the competent authority as defined regulation 7 of the [Conservation of Habitats and Species Regulations 2010/490](#);

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

(2) Where an application is made to the relevant planning authority, a highway authority, a street authority, a traffic authority or the owner of a sewer or drain for any consent, agreement or approval required under any of the provisions of this Order such application shall, where appropriate, conform to the objective standard as set out in the measures of success for discharge of requirements and shall be accompanied by proper and sufficient plans of the proposal and such consent, agreement or approval shall, if given, be in writing and may be given subject to such reasonable terms and conditions as the authority or owner may require and shall not be unreasonably withheld.

(3) Subject to paragraph (5), if, within 56 days after the application has been submitted to the authority or owner (or such extended period as shall be agreed with the undertaker in the event that the authority shall request further information) in accordance with this article, it has not intimated its disapproval and the grounds of disapproval, the authority or owner shall be deemed to have approved the content of the application.

(4) Subject to paragraph (5), in the event of any refusal or disapproval by the authority or owner, the undertaker may resubmit a revised application, or revised plans in support of the original application, and, in that event, if the authority or owner has not intimated its refusal or disapproval and the grounds of refusal or disapproval within 56 days of the revised application or of revised plans being submitted, it shall be deemed to have given its consent or agreement to, or its approval of, the revised application or plans.

(5) Paragraphs (3) and (4) do not apply in the case of any application that is considered by the competent authority as requiring an appropriate assessment under the Conservation of Habitats and Species Regulations 2010.

(6) The undertaker shall not carry out the proposal until any such application or plans have been approved (or deemed to have been approved) or settled by arbitration.

(7) The relevant planning authority shall be entitled to make a reasonable charge for any application for consent, agreement or approval pursuant to paragraph (2).

Certification of plans etc

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

- (a) the works plan comprising of—
 - document reference 2.5 dated 14 February 2013;
 - document reference 2.5.1/v3 dated 19 December 2013;
 - document reference 2.5.2 sheets 1-11 dated 11 December 2012; and
 - document reference 2.5.2 sheet 12 dated 14 February 2013;
- (b) the land plan comprising of—
 - document reference 2.2 dated 14 February 2013;
 - document reference 2.2.1 dated 12 December 2012; and
 - document reference 2.2.2 sheets 1-12 dated 19 February 2013;
- (c) the public rights of way temporary closure plan comprising of—
 - document reference 2.9 dated 14 February 2013;
 - document reference 2.9 sheets 1-5 and 7-11 dated 10 December 2012;
 - document reference 2.9 sheet 6 dated 3 June 2013; and
 - document reference 2.9 sheet 12 dated 14 February 2013;

- (d) the footpath stopping up and diversion plan (document reference 2.8 dated 14 February 2013);
 - (e) the open access land plan comprising of—
 - document reference 2.16 dated 14 February 2013; and
 - document reference 2.16 sheets 1-3 dated 11 December 2012;
 - (f) the important hedgerows plan comprising of—
 - document reference 2.12 dated 14 February 2013;
 - document reference 2.12/v2 sheets 1-7 and 10-12 dated 9 August 2013; and
 - document reference 2.12/v2 sheets 8-9 dated 6 December 2013;
 - (g) the tree preservation order plan (document reference 2.17 dated 10 December 2012);
 - (h) the access to works plan comprising of—
 - document reference 2.7 dated 14 February 2013;
 - document reference 2.7 sheets 1-11 dated 11 December 2012; and
 - document reference 2.7 sheet 12 dated 14 February 2013;
 - (i) the piling restriction plan (Rev 02 dated 19 December 2013);
 - (j) the book of reference (January 2014 – Version 4);
 - (k) the environmental statement (comprising of all document references in the series 6.1-6.4);
 - (l) the outline onshore written scheme of archaeological investigation (December 2013 – Version 2);
 - (m) the outline offshore written scheme of archaeological investigation (November 2013 – Version 1);
 - (n) the outline construction traffic management plan (January 2014 – Version 2);
 - (o) the outline ecological and landscape management plan (November 2013 – Version 2);
 - (p) the onshore substation design and access statement (November 2013 – Version 2);
 - (q) the public rights of way strategy (document reference 8.3 dated March 2013);
 - (r) the outline construction environmental management plan (October 2013 – Version 1);
 - (s) the outline construction noise management plan (October 2013 – Version 1);
 - (t) the outline diver mitigation plan (October 2013 – Version 1);
 - (u) the outline arboricultural method statement (November 2013 – Version 2);
 - (v) the outline hedgerows management plan (November 2013 – Version 2);
 - (w) the outline scour protection management and cable armouring plan (3 December 2013 – Version 2);
 - (x) the outline Tottington Mount management plan (November 2013 – Version 1);
 - (y) the outline cable specification and installation plan (26 November 2013 – Version 2);
 - (z) the outline fisheries liaison strategy (January 2014 – Version 1); and
 - (aa) measures of success for discharge of requirements (January 2014 – Version 1),
- for certification that they are true copies of the documents referred to in this Order.

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

(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 shall be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

(4) In this article, document reference numbers refer to the references given by the undertaker to the documents it submitted to the Secretary of State.

Protective provisions

41. Schedule 12 (protective provisions) shall have effect.

Arbitration

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

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

16th July 2014

Giles Scott
Head of Unit
Department for Energy and Climate Change