
STATUTORY INSTRUMENTS

2014 No. 2441

The Clocaenog Forest Wind Farm Order 2014

PART 1

Preliminary

Citation and commencement

1. This Order may be cited as the Clocaenog Forest Wind Farm Order 2014 and come into force on 2nd October 2014.

Commencement Information

II Art. 1 in force at 2.10.2014, 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);

-
- (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 Sections 2 and 3 were repealed by that Order.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 sections 67 and 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 ([c.34](#)). Subsection (1) of section 11 and sections 3, 31 and 32 were amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 ([c.67](#)) and by section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 ([2006 No. 1](#)). Section 12 was amended by section 56(2) of and Part 1 to Schedule 9 to, the Courts Act 1971 ([c.23](#)). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 ([c. 15](#)). Section 20 was amended by section 70 of, and paragraph 14 of Schedule 15 to, the Planning and Compensation Act 1991 ([c.34](#)). Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 ([c.39](#)). Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991 ([c.34](#)) and by section 14 of, and paragraph 12(2) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 ([2006 No. 1](#)). There are other amendments to the 1965 Act which are not relevant to this Order.
- (3) [1980 c.66](#). Section 1(1) was amended by section 21(2) of the New Roads and Street Works Act 1991 ([c.22](#)); sections 1(2), 1(3) and 1(4) were amended by section 8 of, and paragraph (1) of Schedule 4 to, the Local Government Act 1985 ([c.51](#)); section 1(2A) was inserted, and section 1(3) was amended, by section 259 (1), (2) and (3) of the Greater London Authority Act 1999 ([c.29](#)); sections 1(3A) and 1(5) were inserted by section 22(1) of, and paragraph 1 of Schedule 7 to, the Local Government (Wales) Act 1994 ([c.19](#)). Section 36(2) was amended by section 4(1) of, and paragraphs 47(a) and (b) of Schedule 2 to, the Housing (Consequential Provisions) Act 1985 ([c.71](#)), by [S.I. 2006/1177](#), by section 4 of, and paragraph 45(3) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 ([c.11](#)), by section 64(1) (2) and (3) of the Transport and Works Act (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 64(4) 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)

- “the 1984 Act” means the Road Traffic Regulation Act 1984(4);
- “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 2008 Act” means the Planning Act 2008;
- “access plan” means plan reference CF/PLAN04/ACCESS/01-07 certified as the access and public rights of way plan by the Secretary of State for the purposes of this Order;
- “the ancillary works” means the ancillary works described in Part 2 of Schedule 1 (authorised project) and any other works authorised by the Order which are not development within the meaning of section 32 of the 2008 Act;
- “the authorised development” means the development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order;
- “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- “the authorised project” means the authorised development and the ancillary works authorised by this Order;
- “the book of reference” means the book of reference v2 submitted in November 2013 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;
- “carriageway” has the same meaning as in the 1980 Act;
- “environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of the Order;
- “highway” has the same meaning as in the 1980 Act;
- “the land plan” means the plan reference CF/PLAN01/LAND/01-07 certified as the land plan by the Secretary of State for the purposes of this Order;
- “the limits of deviation” means the limits of deviation referred to in article 6 (power to deviate);
- “maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, but not so as to vary from the description of the authorised project in Schedule 1 and only to the extent assessed in the environmental statement, and “maintenance” is to be construed accordingly;
- “Order land” means the land shown on the land plan as—
- (a) land required for or affected by the authorised development,
 - (b) land subject to the interference with private rights, and
 - (c) land subject to the creation of new rights;
- “Order limits” means the order limits shown on the works plan within which the authorised project may be carried out;

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) 1984 c.27. Section 1 was amended by the New Roads and Street Works Act 1991 (c.22), the Environment Act 1995 (c.25), the Transport Act 2000 (c.38), the Local Transport Act 2008 (c.26). Section 9 was amended by the New Roads and Street Works Act 1991 (c.22), the Road Traffic Act 1991 (c.40) and the Local Government Act 1985 (c.51). Section 14 was amended by the Road Traffic (Temporary Restrictions) Act 1991 (c.26). Section 15 was amended by the Road Traffic (Temporary Restrictions) Act 1991 (c.26) and S.I. 2006/1177. There are other amendments to the 1984 Act which are not relevant to this Order.
- (5) 1990 c.8. Section 2060 was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008 (c.29) (date in force to be appointed see section 241(3), (4)(a), (c) of the 2008 Act). 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 79(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

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

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

“public sewer or drain” means a sewer or drain which belongs to the Natural Resources Wales, a harbour authority within the meaning of section 57 of the Harbours Act 1964(8) (interpretation), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation;

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

“relevant planning authority” means the County Borough of Conwy in relation to land situated in the County Borough of Conwy, and the County of Denbighshire in relation to land situated in the County of Denbighshire;

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“Requirement” means a requirement set out in Part 3 of Schedule 1 (Requirements);

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) of the Communications Act 2003(9).

“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;

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

“undertaker” means RWE Innogy UK Limited (company number 2550622) whose registered office is at Auckland House, Lydiard Fields, Great Western Way, Swindon, Wiltshire SN5 8ZT;

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

“the works plan” means the plan reference CF/PLAN02/WORKS/01-07 certified as the works plan by the Secretary of State for the purposes of this Order.

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

(3) All areas distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised project are taken to be measured along that work.

(4) References in this Order to a numbered work are references to a work number in Part 1 of Schedule 1 (authorised development), and shown on the works plan.

Commencement Information

12 Art. 2 in force at 2.10.2014, see [art. 1](#)

(7) [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.

(8) [1964 c.40](#). Paragraph 9B was inserted into Schedule 2 by the Transport and Works Act 1992 ([c.42](#)), section 63(1) and Schedule 3, paragraph 9(1) and (5). There are other amendments to the 1964 Act which are not relevant to this Order.

(9) [2003 c.21](#). There are amendments to this Act which are not relevant to this Order.

PART 2

Principal powers

Development consent etc granted by the Order

3.—(1) Subject to the provisions of this Order, and to the Requirements in Part 3 of Schedule 1, the undertaker is granted—

- (a) development consent for the authorised development in Part 1 of Schedule 1, and
- (b) consent for the ancillary works in Part 2 of Schedule 1,

to be carried out within the Order limits.

(2) Subject to article 6 (power to deviate), the authorised development may only be constructed in the lines or situations shown on the works plan.

(3) Notwithstanding anything in this Order or shown on the works plan but without prejudice to the provisions of article 6 (power to deviate) the undertaker may construct—

- (a) Works No. 2A, 5A and 14A or Works No. 2B, 5B and 14B but may not construct both Works No. 2A, 5A and 14A and Works No. 2B, 5B and 14B under the powers conferred by this Order, and
- (b) Work No. 4A or 4B but may not construct more than one of those works under the powers conferred by this Order.

(4) Where the undertaker constructs—

- (a) either Work No. 4A or Work No. 4B as part of the authorised development, the undertaker must notify the relevant planning authority prior to the commencement of the authorised development which of those Works it intends to construct, and
- (b) either Works No. 5A and 14A or Works No. 5B and 14B as part of the authorised development, the undertaker must notify the relevant planning authority prior to the commencement of the authorised development which of those Works it intends to construct.

Commencement Information

I3 Art. 3 in force at 2.10.2014, see [art. 1](#)

Procedure in relation to approvals etc under Requirements

4.—(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, as if the Requirement was a condition to which planning permission was subject—

- (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 relevant planning authority required by a condition imposed on the grant of planning permission.

(2) For the purposes of the application of section 262 of the 1990 Act (meaning of “statutory undertaker”) to appeals pursuant to this article, the undertaker is deemed to be a holder of a licence under section 6 of the Electricity Act 1989⁽¹⁰⁾.

⁽¹⁰⁾ Electricity Act 1989 (c.29) Section 6 has been amended by the Utilities Act 2000 (c.27), Energy Act 2004 (c.20), Climate Change Act 2008 (c.27), Energy Act 2011 (c.16), S.I. 2011/2704 and S.I. 2012/2400.

Commencement Information

I4 Art. 4 in force at 2.10.2014, see [art. 1](#)

Maintenance of authorised project

5. Subject to other provisions of this Order or an agreement made under this Order, the undertaker may at any time and from time to time maintain the authorised project.

Commencement Information

I5 Art. 5 in force at 2.10.2014, see [art. 1](#)

Power to deviate

6.—(1) Subject to paragraph (2), in constructing or maintaining the authorised development comprising works numbered 1 to 14B in Schedule 1 (authorised works), the undertaker may deviate laterally from the lines or situations shown on the works plan only to the extent of the limits of deviation shown on that plan.

(2) In constructing and maintaining Work No. 2A or 2B the undertaker may—

- (a) deviate from the commencement and termination points specified for each of the cable routes referred to in the first column of the Tables comprised within the description of those Works, and
- (b) within the limits of deviation, construct and maintain those cable routes between the commencement and termination points so shown in the Tables.

Commencement Information

I6 Art. 6 in force at 2.10.2014, see [art. 1](#)

Operation of generating station

7.—(1) The undertaker is authorised to operate and use the authorised development for generating electricity.

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

Commencement Information

I7 Art. 7 in force at 2.10.2014, see [art. 1](#)

Benefit of Order

8.—(1) Subject to the provisions of this article, the undertaker may with the consent of the Secretary of State—

Changes to legislation: There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Clocaenog Forest Wind Farm Order 2014. Any changes that have already been made by the team appear in the content and are referenced with annotations. (See end of Document for details) [View outstanding changes](#)

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order 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 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 (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) 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.

Commencement Information

I8 Art. 8 in force at 2.10.2014, see [art. 1](#)

Defence to proceedings in respect of statutory nuisance

9.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(**11**) (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 may be made, and no fine may be imposed, under section 82(2) of that Act if the condition set out in paragraph (2) has been satisfied.

(2) The condition to be satisfied for the purposes of paragraph (1) is that the defendant shows that the nuisance relates to premises used by the undertaker for the purposes of or in connection with the construction of the authorised project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under section 60 (control of noise on construction site), or a consent given under section 61 (prior consent for work on construction site) or 65 (noise exceeding registered level), of the Control of Pollution Act 1974(**12**).

(3) 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), does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised project.

(4) The application to the authorised project of section 158 of the 2008 Act (nuisance: statutory authority) or any rule of law having similar effect does not extend to confer upon the undertaker the protection afforded by section 158 of the 2008 Act in respect of any nuisance arising from noise attributable to the use of the authorised project.

Commencement Information

I9 Art. 9 in force at 2.10.2014, see [art. 1](#)

(11) 1990 c.43. There are amendments to this Act which are not relevant to this Order.

(12) 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990 (c.25). There are other amendments to the 1974 Act which are not relevant to this Order.

Street works

10. The undertaker may, for the purposes of the authorised development, 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) place apparatus in the street,
- (c) maintain apparatus in the street or change its position, and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), and (c).

Commencement Information

I10 Art. 10 in force at 2.10.2014, see [art. 1](#)

Stopping up of streets

11.—(1) Subject to the provisions of this article, the undertaker may, in connection with the carrying out of the authorised development, stop up each of the streets specified in columns (1) and (2) of Schedule 3 (streets to be stopped up) to the extent specified, by reference to the letters and numbers shown on the access plan, in column (3) of that Schedule.

(2) No street specified in columns (1) and (2) of Schedule 3 (being a street to be stopped up for which a substitute is to be provided) may be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and subsequently maintained by the undertaker, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

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

(4) This article is subject to article 30 (apparatus etc of statutory undertakers in stopped-up streets).

(5) This article does not relieve the undertaker from any obligation to obtain an order under sections 247 or 257 of the 1990 Act.

Commencement Information

I11 Art. 11 in force at 2.10.2014, see [art. 1](#)

Public rights of way

12.—(1) With effect from the stopping up of the footpath described in columns (1) and (2) of Schedule 3 (streets to be stopped up) all public rights of way over the relevant section of footpath are extinguished and public rights of way over the section of footpath described in column (4) of Schedule 3 (streets to be stopped up) to this Order are created.

(2) This article does not relieve the undertaker from any obligation to obtain an order under sections 247 or 257 of the 1990 Act.

Commencement Information

I12 Art. 12 in force at 2.10.2014, see [art. 1](#)

Application of the 1991 Act

13.—(1) Works carried out under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 of the 1991 Act (street works) as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) of that Act (which defines what highway authority works are major highway works); or
- (b) they are works which, had they been carried out by the highway authority, might have been carried out in exercise of the powers conferred by section 64 of the 1980 Act (dual carriageways and roundabouts).

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under the powers conferred by article 14 (temporary stopping up of streets) and the carrying out of streets works under article 10 (street works) whether or not the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act referred to in paragraph (2) are—

- (a) section 54 (advance notice of certain works),
- (b) section 55 (notice of starting date of works),
- (c) section 57 (notice of emergency works),
- (d) section 59 (general duty of street authority to co-ordinate works),
- (e) section 60 (general duty of undertakers to co-operate),
- (f) section 68 (facilities to be afforded to street authority),
- (g) section 69 (works likely to affect other apparatus in the street),
- (h) section 76 (liability for cost of temporary traffic regulation),
- (i) section 77 (liability for cost of use of alternative route),
- (j) section 82 (liability for damage or loss caused), and

all other such provisions as apply for the purposes of the provisions mentioned above.

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

Commencement Information

I13 Art. 13 in force at 2.10.2014, see [art. 1](#)

Temporary stopping up of streets

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

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

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

(3) Without prejudice to the generality of paragraph (1), the undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the access plan, in column (3) of that Schedule.

(4) The undertaker may not temporarily stop up, alter or divert—

- (a) any street specified as mentioned in paragraph (3) without first consulting the street authority; and
- (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent may not be unreasonably withheld.

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

(6) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (4)(b) that street authority will be deemed to have granted consent.

(7) This article does not relieve the undertaker from any obligation to obtain an order under the 1984 Act.

Commencement Information

I14 Art. 14 in force at 2.10.2014, see [art. 1](#)

Access to works

15.—(1) The undertaker may, for the purposes of the construction or maintenance of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 5 (access to works) at or about the points marked “X” on the works plan,
- (b) with the approval of the relevant planning authority, such approval not to be unreasonably withheld, after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project, and
- (c) with the approval of the relevant planning authority, such approval not to be unreasonably withheld, after consultation with the highway authority, strengthen, improve, repair or reconstruct any street under the powers conferred by this Order.

(2) If a relevant planning authority which receives an application for approval under paragraph (1) (b) or (c) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it will be deemed to have granted approval.

Commencement Information

I15 Art. 15 in force at 2.10.2014, see [art. 1](#)

Construction and maintenance of new or altered streets

16.—(1) Any street to be constructed under this Order is to be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed, be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street, when completed to the reasonable satisfaction of the street authority, and unless otherwise agreed, is to be maintained by and at the expense of the undertaker for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(3) In any action against the undertaker in respect of loss or damage resulting from any failure by it to maintain a street under this article, it shall be a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the undertaker had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(4) For the purposes of a defence under paragraph (3), the court is to have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonably person would have expected to find the street;
- (d) whether the undertaker knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street;
- (e) where the undertaker could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that the undertaker had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that the undertaker had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(5) Nothing in this article shall—

- (a) prejudice the operation of section 87 of the 1991 Act (prospectively maintainable highways); and the undertaker may not by reason of any duty under that article to maintain a street be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) have effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Commencement Information

I16 Art. 16 in force at 2.10.2014, see [art. 1](#)

Agreements with street authorities

- 17.—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street authorised by this Order;
 - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) any stopping up, alteration or diversion of a street authorised by this Order; or
 - (d) the carrying out in the street of any of the works referred to in article 10(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.

Commencement Information

I17 Art. 17 in force at 2.10.2014, see [art. 1](#)

Discharge of water

18.—(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(13) (right to communicate with public sewers).

(3) The undertaker may 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 may not be unreasonably withheld.

- (4) The undertaker may 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 may not be unreasonably withheld; and
 - (b) where that person has been given the opportunity to supervise the making of the opening.

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

(6) The undertaker 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(14).

(13) [1991 c.56](#). Section 106 was amended by sections 36(2) and 99 of the Water Act [2003 \(c.37\)](#). There are other amendments to this section which are not relevant to this Order.

(14) [S.I. 2010/675](#).

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

(9) This article does not relieve the undertaker of any requirement to obtain from the Natural Resources Wales any permit or licence under any other legislation that may be required to authorise the making of a connection to or, the use of a public sewer or drain by the undertaker pursuant to paragraph (1) or the discharge of any water into any watercourse, sewer or drain pursuant to paragraph (2).

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

Commencement Information

I18 Art. 18 in force at 2.10.2014, see [art. 1](#)

Authority to survey and investigate the land

19.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits and—

- (a) survey or investigate the land,
- (b) without 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) must, in order to enter onto land under this article, if so required when 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 may not be unreasonably withheld.

(5) The undertaker will 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, Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or a street authority fails to notify the undertaker of a decision within 28 days of receiving an application or consent under paragraph (4)(a) or (4)(b), as the case may be, that authority will be deemed to have granted consent.

Commencement Information

I19 Art. 19 in force at 2.10.2014, see [art. 1](#)

PART 3

Powers of acquisition

Compulsory acquisition of land and rights

20. Subject to article 23 (compulsory acquisition of rights) and article 33 (Crown rights) 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.

Commencement Information

I20 Art. 20 in force at 2.10.2014, see [art. 1](#)

Time limit for exercise of authority to acquire land compulsorily

- 21.** After the end of the period of 5 years beginning on the day on which this Order is made—
- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
 - (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981(15)).

Commencement Information

I21 Art. 21 in force at 2.10.2014, see [art. 1](#)

Application and modification of legislative provisions

22.—(1) Subject to the modifications set out in paragraph (2), for the purposes of Schedule 2 to the 1981 Act, Parts 1, 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(16) (minerals) apply to the Order land as if this Order were a compulsory purchase order made under Part 1 of that Act.

- (2) The modifications are—
- (a) paragraph 8(3) is not incorporated;
 - (b) for “the acquiring authority” substitute “the undertaker”; and
 - (c) in paragraph 1(1) after “compulsory purchase order” insert “or a development consent order”.

(3) In this article “mines” has the same meaning as in paragraph 1 of Part 1 of Schedule 2 to the Acquisition of Land Act 1981.

(15) [1981 c.66](#). Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 ([c.11](#)). There are other amendments to the 1981 Act which are not relevant to this Order.

(16) [1981 c.67](#). Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 ([c.21](#)) and paragraph 8 of Part 3 of Schedule was amended by section 46 of the Criminal Justice Act 1982 ([c.48](#)). There are other amendments to the 1981 Act which are not relevant to this Order.

Commencement Information

I22 Art. 22 in force at 2.10.2014, see [art. 1](#)

Compulsory acquisition of rights

23.—(1) The undertaker may acquire compulsorily new rights over the Order land specified in column (1) of Part 1 of Schedule 6 (Land subject to acquisition of new rights and interference with private rights), by creating them. The undertaker’s powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (2) of Part 1 of that Schedule.

(2) The undertaker may interfere with such private rights as are specified in column (2) of Part 2 of that Schedule in relation to the land specified in column (1) of Part 2 of that Schedule.

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

(4) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over the Order land by the creation of a new right.

Commencement Information

I23 Art. 23 in force at 2.10.2014, see [art. 1](#)

Private rights

24.—(1) From the date of entry by the undertaker onto any part of the Order land for the purposes of exercising any power under the Order, the private rights over the Order land referred to in paragraph (7) are subject to the provisions of this article.

(2) All private rights over land of which the undertaker takes temporary possession for construction purposes are suspended and unenforceable for so long as the undertaker remains in occupation of that land.

(3) Any person who suffers loss by the 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.

(4) 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) applies.

(5) Paragraph (2) has effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the Order land or the acquisition of rights over or affecting the Order land,

(ii) the undertaker’s taking temporary possession of it,

that any or all of those paragraphs may 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.

- (6) If any such agreement as is referred to in paragraph (5)(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 is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(7) Reference in this article to private rights over land means the private rights specified in column (2) of Part 2 of Schedule 6 to this Order in relation to the lands numbered 2, 3, 4, 5, 6, 7 and 8 on the land plan and includes references to any trusts or incidents to which the land is subject.

Commencement Information

I24 Art. 24 in force at 2.10.2014, see [art. 1](#)

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

25.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(17) applies as if this Order were a compulsory purchase order.

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

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

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority 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 is substituted “(1)” and “and published” is inserted after “given”.

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

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

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

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

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

(17) 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 Parr 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 other amendments to the 1981 Act which are not relevant to this Order.

(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)” is omitted.

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to that Act as applied by section 125 of the 2008 Act.

Commencement Information

I25 Art. 25 in force at 2.10.2014, see [art. 1](#)

PART 4

Miscellaneous and general

Application of landlord and tenant law

26.—(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 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

I26 Art. 26 in force at 2.10.2014, see [art. 1](#)

Operational land for purposes of the 1990 Act

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

Commencement Information

I27 Art. 27 in force at 2.10.2014, see [art. 1](#)

Felling or lopping of trees

28.—(1) The undertaker may fell or lop any tree or shrub within or encroaching upon 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—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project; or
- (b) from constituting a danger to persons using the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker may 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, is to be determined under Part 1 of the 1961 Act.

(4) The exercise of any power under paragraph (1) may be exercised only with the consent of the owner of the land concerned.

Commencement Information

I28 Art. 28 in force at 2.10.2014, see [art. 1](#)

Statutory undertakers

29.—(1) The undertaker may for the purposes of article 10 (street works)—

- (a) remove or reposition apparatus belonging to statutory undertakers which is laid beneath the relevant streets, and
- (b) acquire compulsorily a right over the relevant streets.

(2) In this article “relevant streets” means the streets within the plots of land described in column (1) of Part 1 of Schedule 6 to this Order.

Commencement Information

I29 Art. 29 in force at 2.10.2014, see [art. 1](#)

Apparatus and rights of statutory undertakers in stopped-up streets

30.—(1) Where a street is stopped up under article 11 (stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 11 (stopping up of streets), any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it, or

- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).
- (3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—
- (a) the execution of the relocation works required in consequence of the stopping up of the street, and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.
- (4) If in the course of the execution of relocation works under paragraph (2)—
- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus, or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,
- and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) shall be reduced by the amount of that excess.
- (5) For the purposes of paragraph (4)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus may not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.
- (6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.
- (7) Paragraphs (3) to (6) may not apply where the authorised project constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—
- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

Commencement Information

I30 Art. 30 in force at 2.10.2014, see [art. 1](#)

Recovery of costs of new connections

31.—(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) may not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 (statutory undertakers), any person who is—

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

is 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 may not have effect in relation to apparatus to which article 30 (apparatus and rights of statutory undertakers in stopped-up streets) or Part 3 of the 1991 Act applies.

Commencement Information

I31 Art. 31 in force at 2.10.2014, see [art. 1](#)

Removal of human remains

32.—(1) In this article “the specified land” means the land within the limits of deviation.

(2) Before the undertaker carries out any development or works which will or may disturb any human remains in the specified land it shall 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 two 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 shall send a copy of the notice to Denbighshire County Council and Conwy County Borough Council.

(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 is to 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 will remove the remains and as to the payment of the costs of the application.

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

(9) Subject to paragraph (10), the undertaker must remove any remains in the specified land 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 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 the remains,
- (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,
- (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,

and, so far as possible, remains from individual graves must be re-interred in individual containers which are to 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 by the undertaker 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) shall be sent by the undertaker to Denbighshire County Council and Conwy County Borough Council.

(12) The removal of the remains of any deceased person under this article is to 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⁽¹⁸⁾ (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) may not apply to a removal carried out in accordance with this article.

Commencement Information

I32 Art. 32 in force at 2.10.2014, see [art. 1](#)

⁽¹⁸⁾ 1857 c.81. There are amendments to this Act which are not relevant to this Order.

Crown rights

33.—(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—

- (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 her 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 her 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.

Commencement Information

I33 Art. 33 in force at 2.10.2014, see [art. 1](#)

Service of notices

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

- (a) by post,
- (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 (8) 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(**19**) 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 any 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 obligation 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 7 days of receipt that the recipient requires a paper copy of all or 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 electronic communication given 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 by 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 may not be less than 7 days after the date on which the notice is given.

(9) This article may not be taken to exclude the employment of any method of service not expressly provided for by it.

(10) In this article “legible in all material respects” means that the information contained in the notice or document is available to that person to no lesser extent than it would be if served, given or supplied by means of a notice or document in printed form.

Commencement Information

I34 Art. 34 in force at 2.10.2014, see [art. 1](#)

Protection of interests

35. Schedule 8 (protection of electricity, gas, water and sewerage undertakers to this Order) has effect.

Commencement Information

I35 Art. 35 in force at 2.10.2014, see [art. 1](#)

Certification of plans etc

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

- (a) the book of reference;
- (b) the land plan;
- (c) access plan;
- (d) the works plan; and
- (e) any other plans or documents referred to in this Order,

for certification that they are true copies of the documents referred to in this Order.

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

Commencement Information

I36 Art. 36 in force at 2.10.2014, see [art. 1](#)

Arbitration

37. Any difference under any provision of this Order, unless otherwise provided for, is to 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.

Commencement Information

I37 Art. 37 in force at 2.10.2014, see [art. 1](#)

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

11th September 2014

Giles Scott
Head of Unit
Department of Energy and Climate Change

Changes to legislation:

There are outstanding changes not yet made by the legislation.gov.uk editorial team to The Clocaenog Forest Wind Farm Order 2014. Any changes that have already been made by the team appear in the content and are referenced with annotations.

[View outstanding changes](#)

Changes and effects yet to be applied to :

- Sch. 1 Pt. 1 table inserted by [S.I. 2017/1197 art. 5\(5\)](#)
- Sch. 1 Pt. 1 table entitled "New tracks" word substituted by [S.I. 2017/1197 art. 5\(3\)\(a\)\(i\)](#)
- Sch. 1 Pt. 1 table entitled "New tracks" word substituted by [S.I. 2017/1197 art. 5\(3\)\(a\)\(ii\)](#)
- Sch. 1 Pt. 1 table entitled "Existing tracks subject to improvement and widening" word substituted by [S.I. 2017/1197 art. 5\(4\)\(a\)](#)
- Sch. 1 Pt. 1 table entitled "Existing tracks subject to improvement and widening" word substituted by [S.I. 2017/1197 art. 5\(4\)\(b\)](#)
- Sch. 1 Pt. 1 table entitled "New tracks" words inserted by [S.I. 2017/1197 art. 5\(3\)\(b\)](#)
- Sch. 1 Pt. 3 para. 1 words substituted by [S.I. 2017/1012 Sch. 6 para. 38](#)
- Sch. 1 Pt. 1 words substituted by [S.I. 2017/1197 art. 5\(1\)](#)
- art. 2(1) words substituted by [S.I. 2017/1197 art. 3\(2\)](#)
- art. 18(7) words substituted by [S.I. 2016/1154 Sch. 29 Pt. 2 para. 69](#)

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

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

- art. 36(1A) inserted by [S.I. 2017/1197 art. 4\(2\)](#)