
STATUTORY INSTRUMENTS

2014 No. 2950

The Walney Extension Offshore Wind Farm Order 2014

Citation and commencement

1. This Order may be cited as the Walney Extension Offshore Wind Farm Order 2014 and shall come into force on 28th November 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. Part 1 of the Act was amended by Schedule 1, paragraph 38 of the [Transfer of Tribunal Functions \(Lands Tribunal and Miscellaneous Amendments\) Order 2009/1307](#). 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). Section 11(1) 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); section 1(2), (3) and (4) was amended by section 8 of, and paragraph 1 of Schedule 4 to, the Local Government Act 1985 (c. 51); section 1(2A) was inserted by, 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) was 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 paragraph 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 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) 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 other 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);

“the 2010 Act” means the Flood and Water Management Act 2010(9);

“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;

“AOD” means above ordnance datum;

“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;

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

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

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

“CAA” means the Civil Aviation Authority constituted by the Civil Aviation Act 1982(10);

“cable crossings” means the crossing of existing subsea cables by the inter-array and/or export cables authorised by the Order together with cable protection;

“cable ducts” means conduits for the installation of cables;

“cable jointing bays” means the underground concrete bays comprised in the connection works where the onshore export cables are jointed (but does not include the transition joint bays);

“cable protection” means physical measures for the protection of cables including concrete mattresses, with or without frond devices, and/or rock placement;

“cables” shall include direct lay cables and/or cables laid in cable ducts and shall include fibre optic cables either within the cable or laid alongside;

“cable systems” means the three electrical cables and their respective accessories including cable joints and terminations, with an operating voltage of up to 400kV, necessary to transmit the power between two electrical nodes within the authorised development, and for the offshore element of the cable corridor, comprising subsea export cables, the three cables shall be bundled together as one cable system, and for the onshore element of the cable corridor, the cable system shall comprise three separate onshore cables, each containing a single conductor, and the cable system may also include one or more auxiliary cables (normally fibre optic cables) for the purpose of control, monitoring, protection or general communications;

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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(3) 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 and 47 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) 2010 c. 29.
- (10) 1982 c. 16.

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

“CoCP” means the document certified by the Secretary of State as the Code of Construction Practice for the purposes of the Order;

“commence”, unless otherwise provided for, in relation to the authorised project, means—

- (a) in relation to works seaward of MHWS the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for pre-construction surveys and/or monitoring; and
- (b) in relation to all other works, beginning to carry out any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the authorised project save for operations consisting of pre-construction surveys and/or monitoring, site clearance, demolition work, archaeological investigations, environmental surveys, investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and laying of services, erection of any temporary means of enclosure, the temporary display of site notices or advertisements and the words ‘commencement’ and ‘commenced’ shall be construed accordingly;

“connection works” means Work Nos. 3B to 27 and any related further associated development;

“construction working site” means a 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;

“deemed Generator Assets Marine Licence” means the licence set out in Schedule 9 and deemed by article 37 (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 marine licences” means one or both of the deemed Generator Assets Marine Licence and the deemed Transmission Assets Marine Licence;

“deemed Transmission Assets Marine Licence” means the licence set out in Schedule 10 and deemed by article 37 (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;

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

“Disposal Site” means the designated disposal site identified as IS215 Walney bounded by the Order limits described within Point IDs 69 to 100 (inclusively) and Point IDs 216 to 233 (inclusively) in the table that follows paragraph 2(2) of Part 1 of Schedule 1, which are shown on the Order limits and grid coordinates plan;

“DONG Energy Walney Extension (UK) Limited” means the company registered in England and Wales as DONG Energy Walney Extension (UK) Limited with number 07306956;

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

“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 28th June 2013, together with any supplementary or further environmental information submitted to

the Examining authority as part of the examination of the application for this Order, including but not limited to, the Transport Statement;

“examination” means the examination under Chapter 4 in Part 6 of the 2008 Act into the application for this Order;

“Examining authority” means the Panel appointed as an Examining authority under Chapter 2 in Part 6 of the 2008 Act to examine the application for this Order;

“fibre optic joint pits” means the underground concrete or plastic pits where the fibre optic cables are jointed together;

“frond devices” means flow energy dissipation devices, which reduce current velocity and turbulence and encourage settlement of sediment;

“General Arrangement Drawings” means the drawings certified by the Secretary of State as the General Arrangement Drawings for the purposes of the Order;

“HAT” means highest astronomical tide;

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

“highway authority” has the same meaning as in the 1980 Act and for the purposes of this Order includes Lancashire County Council;

“horizontal directional drilling compound” means a construction site associated with the connection works where horizontal directional drilling is proposed including hard standing, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas comprising water and bentonite tanks, pumps and pipes, areas for welfare facilities including offices and canteen and washroom facilities, wheel washing facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

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

“inter-array cable” means the network of offshore subsea cables connecting the WTGs in Work No. 1 with the offshore substations in Work No. 2(a);

“jacket structure” means a lattice type structure constructed of steel, which may include scour protection and additional equipment such as, J-tubes, corrosion protection systems and access platforms;

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

“LAT” means lowest astronomical tide;

“Lead Local Flood Authority” has the same meaning as section 6(7) of the 2010 Act and for the purposes of this Order includes Lancashire County Council;

“link box” means the underground metal box placed within a plastic or concrete pit where the metal sheaths between adjacent export cable sections are connected and earthed;

“maintain”, unless otherwise provided for, includes inspect, repair, adjust, alter, remove, reconstruct and replace any of the authorised development, and any derivative of “maintain” shall be construed accordingly;

“MCA” means the Maritime and Coastguard Agency;

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

“mean low water” or “MLW” means the average height of all low water above Chart Datum;

“MMO” means the Marine Management Organisation;

“monopile foundation” means a steel cylindrical pile, driven, vibrated and/or drilled into the seabed and may include scour protection and additional equipment such as, J-tubes, corrosion protection systems and access platforms;

“Natural England” means the body established by section 1 of the Natural Environment and Rural Communities Act 2006⁽¹¹⁾;

“the Noise Monitoring Location Plan” means the document certified by the Secretary of State as the Noise Monitoring Location Plan for the purposes of the Order;

“offshore substation platform” means a platform with one or more decks, whether open or fully clad, accommodating medium to high voltage electrical power transformers, medium and/or high voltage switch gear, fire fighting facilities, workshop facilities, helicopter landing facilities, potable water storage, black water separation equipment, instrumentation, metering equipment, control systems, standby electrical generation equipment, auxiliary and uninterruptible power supply systems, emergency accommodation including mess facilities, control hub, drainage facilities, access equipment, marking and lighting and other associated equipment and facilities;

“onshore cable corridor” means the onshore area of the Order limits between the transition joint bay compound and the electrical substation compound in which the onshore export cables will be located;

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

“the Order limits” means the limits shown on the Order limits and grid coordinates 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 () to this Order;

“the Order limits and grid coordinates plan” means the plan certified by the Secretary of State as the Order limits and grid coordinates plan for the purposes of the Order;

“Outline CTMP” means the document certified by the Secretary of State as the Outline Construction Traffic Management Plan for the purposes of the Order;

“owner” in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981⁽¹²⁾;

“Public Access Strategy” means the document certified by the Secretary of State as the Public Access Strategy for the purposes of the Order;

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

“relevant planning authority” means Lancaster City Council;

“Renewable Energy Zone” means the areas of the sea designated under the Renewable Energy Zone (Designation of Area) Order 2004⁽¹³⁾;

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

“Schedule of Offshore Maintenance Activities” means the document certified by the Secretary of State as the Schedule of Offshore Maintenance Activities for the purposes of the Order;

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

(11) 2006 c. 16. Section 1 was amended by section 311(2) and (3) of the Marine and Coastal Access Act 2009.

(12) 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.

(13) S.I. 2004/2668.

“stage” means one or more of the stages of the connection works, as agreed with the relevant planning authority pursuant to Requirement 15;

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

“suction caisson” means a steel cylindrical structure attached to the legs of a jacket structure which partially or fully penetrates the seabed and remains in place using its own weight and hydrostatic pressure differential, and may include scour protection and additional equipment such as J-Tubes;

“territorial waters” means the territorial waters within section 1 of the Territorial Sea Act 1987(14);

“transition joint bay compound” means the area comprised in Work No. 6 in which the transition joint bays will be constructed;

“transition joint bays” means the underground concrete bays in Work No. 6 where the offshore export cable systems comprised in Work No. 3B are jointed to the onshore export cable systems;

“transition piece” means the metal structure attached to the top of the foundation where the base of the wind turbine generator is connected and may include additional equipment such as J-Tubes, corrosion protection systems, boat access systems, access platforms, craneage, and associated equipment;

“Transport Statement” means the document certified by the Secretary of State as the Transport Statement for the purposes of the Order;

“tree preservation order” has the meaning given in section 198 of the 1990 Act;

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

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

“undertaker” means DONG Energy Walney Extension (UK) Limited and any other person who has the benefit of that provision in accordance with article 5;

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

“watercourse” includes all rivers, streams, ditches, drains, 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 system with three blades, nacelle and ancillary electrical and other associated equipment which may include lighting, J-tubes, access and rest platforms, access ladders, access lift, boat access systems, corrosion protection systems, fenders and maintenance equipment, heli-hoist platform and other associated equipment, fixed to a foundation or transition piece;

“Work No.” means that part of the authorised development with the corresponding number specified in Part 1 of Schedule 1 of this Order;

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

(14) 1987 c. 49. There are amendments to the 1987 Act but they are not relevant to 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 distances, directions and lengths referred to in this Order are approximate and distances between points on a work comprised in the authorised development shall be taken to be measured along that work.

(4) All areas described in square metres in the book of reference are approximate.

(5) Any references in this Order to a work identified by the number of the work is to be construed as a reference to the work of that number authorised by this Order, except that references to Work Nos. 1 to 3B in Schedules 9 and 10 shall be construed in accordance with the provisions of those Schedules.

(6) References in this Order to numbered Requirements are to the Requirements as numbered in Part 3 of Schedule 1.

(7) The expression “includes” shall be construed without limitation.

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 the Requirements, Work Nos. 1 to 3A shall be constructed anywhere within the Order limits seaward of mean high water springs and Work Nos. 3B to 27 shall be constructed anywhere within the Order limits landward of mean low water.

Maintenance of authorised project

4.—(1) The undertaker may at any time maintain the authorised development, except to the extent that this Order or an agreement made under this Order provides otherwise. No maintenance works whose likely effects on the environment are not assessed in the environmental statement shall take effect, unless otherwise approved by the MMO or the relevant planning authority. The Schedule of Offshore Maintenance Activities identifies those offshore maintenance activities that have been assessed in the environmental statement.

(2) Where the MMO or relevant planning authority’s approval is required under paragraph (1), such consent must only be given in relation to immaterial changes where it has been demonstrated to the satisfaction of discharging authority that the approval is sought is unlikely to give rise to any materially new or materially different environmental effects from those assessed in the environmental statement.

Benefit of the Order

5.—(1) Subject to paragraphs (3) and (4), the undertaker may, with the written consent of the Secretary of State—

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

except where paragraph (6) applies, in which case no such consent shall be required.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker, except in paragraphs (3), (5) and (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 Generator Assets Marine Licence and/or the whole of the deemed Transmission Assets 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 Generator Assets Marine Licence and/or the whole of the deemed Transmission Assets Marine Licence and such related statutory rights as may be so agreed.

except where paragraph (6) applies, in which case no such consent shall be required.

(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.

(6) This paragraph applies to any provision of this Order and its related statutory rights where—

- (a) the transferee or lessee is the holder of a licence under section 6 of the Electricity Act 1989⁽¹⁵⁾; or
- (b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—
 - (i) no such claims have been made,
 - (ii) any such claim has been made and has been compromised or withdrawn,
 - (iii) compensation has been paid in final settlement of any such claim,
 - (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
 - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation shall be payable.

(7) Where paragraph (6) applies—

- (a) the undertaker shall provide written notification of any transfer and/or grant of any benefit under paragraph (1), to the Secretary of State; and
- (b) the undertaker shall provide written notification of any transfer and/or grant of any deemed marine licence under paragraph (3), to the MMO.

⁽¹⁵⁾ 1989 c. 29. Subsection 6(2A) was inserted by sections 145(1) and (6) of the Energy Act 2004 (c. 20).

(8) The provisions of articles 10 (street works), 11 (temporary stopping up of streets), 19 (compulsory acquisition of land), 21 (compulsory acquisition of rights), 27 (temporary use of land for carrying out the authorised project) and 28 (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 27 a person who holds a licence under the Electricity Act 1989, or
- (b) in respect of functions under article 10 (street works) relating to a street, a street authority.

Operation of generating station

6.—(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 to authorise the operation of a generating station.

Application of the Hedgerows Regulations 1997

7. Regulation 6 of the Hedgerows Regulations 1997⁽¹⁶⁾ shall be modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j) the following—

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

Defence to proceedings in respect of statutory nuisance

8.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁷⁾ (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—
 - (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 65 (noise exceeding registered level), of the Control of Pollution Act 1974⁽¹⁸⁾; 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 Requirement 35; or
 - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

⁽¹⁶⁾ S.I. 1997/1160. There are amendments to this Statutory Instrument which are not relevant to this Order.

⁽¹⁷⁾ 1990 c. 43. There are amendments to this Act which are not relevant to this Order.

⁽¹⁸⁾ 1974 c. 40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 15 to, the Environmental Protection Act 1990 (c. 43). There are other amendments to the 1974 Act which are not relevant to this Order.

(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 the purposes of or in connection with the construction or maintenance of the authorised project.

Requirements, appeals etc.

9.—(1) Where an application is made to the relevant planning authority for any consent, agreement or approval required by Requirements 15 to 42 (Requirements that relate to land above mean low water), 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 a condition imposed on the grant of planning permission—

- (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.

(3) 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.

Street works

10.—(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 in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (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.

Temporary stopping up of streets

11.—(1) Subject to paragraphs (3), (4) and (5), the undertaker, during and for the purposes of carrying out the authorised project, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
 - (b) subject to paragraph (3), prevent all persons from passing along the street.
- (2) Without prejudice to paragraph (1), the undertaker may use any street temporarily stopped up under the powers conferred by this article within the Order limits as a temporary working site.
- (3) The undertaker must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.
- (4) The undertaker may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 3 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.
- (5) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site—
- (a) any street specified as mentioned in paragraph (4) without first consulting the street authority; and
 - (b) any other street without the consent of the street authority which may attach reasonable conditions to any consent.
- (6) 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.
- (7) If a street authority fails to notify the undertaker of its decision within 28 days of receiving an application for consent under paragraph (5)(b) that street authority shall be deemed to have granted consent.

Temporary stopping up of public rights of way

12. 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 columns (2) of Schedule 4 (public rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the letters and numbers shown on the public rights of way plans.

Access to works

- 13.** The undertaker may, for the purposes of the authorised project—
- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 5 (access to works); and
 - (b) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

Agreements with street authorities

- 14.—(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;
 - (b) 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.

Discharge of water

15.—(1) The undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out construction 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(**19**) (right to communicate with public sewers).

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

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

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval 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 must not, in carrying out or maintaining works pursuant to this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

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

(7) 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(**20**).

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

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Environment Agency, a harbour authority within the meaning of section 57 of the Harbours Act 1964(**21**) (interpretation), an internal drainage board, a joint planning board, a local authority, or a sewerage undertaker; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2010 have the same meaning as in those Regulations.

(19) 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.

(20) 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.

(21) 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.

Protective work to buildings

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

(2) Protective works may be carried out—

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

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

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

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 42 (arbitration).

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

(8) Where—

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

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

(9) Nothing in this article shall relieve the undertaker from any liability to pay compensation under section 152 of the 2008 Act(22) (compensation in case where no right to claim in nuisance).

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

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

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

Authority to survey and investigate the land

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

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

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

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

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

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

- (a) under paragraph (4)(a) in the case of a highway authority; or
- (b) under paragraph (4)(b) in the case of a street authority;

that authority shall be deemed to have granted consent.

Removal of human remains

18.—(1) In this article “the specified land” means the land landward of MHWS within the Order limits.

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

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

- (a) publishing a notice once in each of 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 the relevant local authority.

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

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

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

and that person shall, 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 shall 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 shall remove the remains and as to the payment of the costs of the application.

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

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or
- (b) such notice is given and no application is made under paragraph (7) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (7) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves shall be re-interred in individual containers which shall 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 shall 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) must be sent by the undertaker to the relevant local authority mentioned in paragraph (4).

(12) The removal of the remains of any deceased person under this article must be carried out in accordance with any directions which may be given by the Secretary of State.

(13) Any jurisdiction or function conferred on the county court by this article may be exercised by the district judge of the court.

(14) Section 25 of the Burial Act 1857⁽²³⁾ (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) shall not apply to a removal carried out in accordance with this article.

Compulsory acquisition of land

19.—(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 article 21 (compulsory acquisition of rights) and article 27 (temporary use of land for carrying out the authorised project).

Time limit for exercise of authority to acquire land compulsorily

20.—(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 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 27 (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

21.—(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 19 (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 22 (private rights), article 27 (temporary use of land for carrying out the authorised project), article 28 (temporary use of land for maintaining the authorised project) and article 29 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 6 (land in which new rights etc. may be acquired) the undertaker's powers

(23) 1857 c. 81. There are amendments to this Act which are not relevant to this Order.

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 7 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker shall not be required to acquire a greater interest in that land.

(4) Schedule 7 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 a restrictive covenant.

(5) In any case where the acquisition of new rights under paragraph (1) or the imposition of restrictive covenants under paragraph (4) 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 or impose such covenants to the statutory undertaker in question.

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

(7) Any person who suffers loss as a result of the extinguishment or 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⁽²⁴⁾.

Private rights

22.—(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 earlier.

(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 specified in column (1) of Schedule 6 (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 or the imposition of restrictive covenants under the Order—

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant 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 earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker which, being within the limits of land which may be acquired or used shown on the land plans, are required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(24) 1961 c. 33. Sections 2 and 3 were repealed by S.I. 2009/1307.

(4) 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.

(5) 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.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) 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 appropriation of it,
- (iii) the undertaker's entry onto it, or
- (iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs 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.

(8) If any such agreement as is referred to in paragraph (7)(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.

(9) 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

23.—(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 to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

24.—(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 19 (compulsory acquisition of land) 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 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 25 (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

25.—(1) This article shall apply instead of section 8(1) of the 1965 Act (other provisions as 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 must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Rights under or over streets

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

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

(3) Paragraph (2) 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

27.—(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 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule;

(ii) subject to paragraph (11), 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 construction working site with access to the construction working site in connection with the authorised development; and

(e) construct any works, or to use the land, as specified in relation to that land in column (3) of Schedule 8, or any mitigation works.

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

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 8; and

(b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of this land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to—

(a) replace a building removed under this article;

(b) restore the land on which any works have been constructed under paragraph (1)(e), or

- (c) remove any ground strengthening works which have been placed in that land to facilitate construction of the authorised development.
- (5) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, 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) 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 21 (compulsory acquisition of rights); or
 - (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 24 (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).
- (11) Paragraph (1)(a)(ii) shall not authorise the undertaker to take temporary possession of any land which it is not authorised to acquire under article 19 (compulsory acquisition of land).
- (12) Nothing in this article shall prevent the taking of temporary possession more than once in relation to any land specified in Schedule 8.

Temporary use of land for maintaining the authorised project

- 28.**—(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 must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance 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 must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, 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 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 is first opened for use.

Statutory undertakers

29. Subject to the provisions of Schedule 12 (Protective Provisions), the undertaker may—

- (a) acquire compulsorily the land, or 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 the rights of, remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land.

Recovery of costs of new connections

30.—(1) Where any apparatus of public utility undertakers 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 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 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,

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) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(25); and

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

Application of landlord and tenant law

31.—(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 the purposes of the 1990 Act

32. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3) 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 the removal of hedgerows

33.—(1) The undertaker may fell or lop any tree that is not subject to a tree preservation order 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 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) The undertaker may remove any hedgerows within the Order limits that may be required for the purposes of the carrying out of the authorised development.

(4) The undertaker may remove the important hedgerows as are within the Order limits and specified in Schedule 11 (removal of important hedgerows) and identified on the important hedgerows plan.

(5) The undertaker shall not be required to comply with the requirements of regulation 5 of the Hedgerow Regulations 1997 in exercising the authority given by paragraphs (3) and (4) and it shall not be guilty of an offence under regulation 7(1) of the said Regulations if it does so.

(6) 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.

(7) In this article "hedgerow" and "important hedgerow" have the same meaning as in the Hedgerow Regulations 1997.

Trees subject to tree preservation orders

34.—(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order which was made after 28th June 2013, or cut back its roots, if it reasonably believes it to be necessary to do so in order to prevent the tree from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

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

(a) the undertaker shall do no unnecessary damage to any tree 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.

Public rights of navigation

35.—(1) Subject to paragraphs (2) to (4), the rights of navigation over the places in the sea within territorial waters where any of the wind turbine generators and offshore substation platforms ("the Installations"), including their foundations, comprising part of the authorised development are located ("the relevant rights of navigations"), shall be extinguished.

(2) The extinguishment of the relevant 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, Trinity House, the MCA and the MMO showing the precise locations of the foundations of each of the Installations to be constructed as part of the authorised development.

(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 in such form and manner as required by the Secretary of State.

Abatement of works abandoned or decayed

36.—(1) Where Work No. 1 and Work No. 2 or one or both of them, or any part of them, is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, by notice in writing require the undertaker at its own expense either to repair and restore one or both of those Works, or any relevant part of them, or to remove them and, without prejudice to any notice served under section 105(2) of the 2004 Act restore the site to a safe and proper condition, to such an extent and within such limits as may be specified in the notice.

(2) If the undertaker fails to comply in any respect with a notice served under this article within the period of 30 days beginning with the date of service of the notice, 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 licences under the Marine and Coastal Access Act 2009

37. The deemed marine licences set out in Part 1 of Schedules 9 (deemed generator assets marine licence under the Marine and Coastal Access Act 2009) and 10 (deemed transmission assets marine licence under the Marine and Coastal Access Act 2009) respectively, 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 each of those Schedules.

Saving for Trinity House

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

Crown rights

39.—(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;
 - (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
 - (iv) belonging to Her Majesty in right of the Duchy of Lancaster, without the consent in writing of the Chancellor of the Duchy; 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.

Certification of plans etc.

40.—(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 CoCP;
- (c) the design and access statement;
- (d) the environmental statement;

- (e) the General Arrangement Drawings;
- (f) the important hedgerows plan;
- (g) the land plans;
- (h) the Noise Monitoring Location Plan;
- (i) the Order limits and grid coordinates plan;
- (j) the Outline CTMP;
- (k) the Public Access Strategy;
- (l) the public rights of way plan;
- (m) the Schedule of Offshore Maintenance Activities;
- (n) the street works plan;
- (o) the Transport Statement; and
- (p) the works plans,

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.

Protective provisions

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

Arbitration

42. Any difference 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 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

7th November 2014

Giles Scott
Head of National Infrastructure Consents
Department of Energy and Climate Change