
STATUTORY INSTRUMENTS

2015 No. 1561

The Preesall Underground Gas Storage Facility Order 2015

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Preesall Underground Gas Storage Facility Order 2015 and shall come into force on 7th August 2015.

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 1990 Act” means the Town and Country Planning Act 1990(4);

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- (1) 1961 c. 33. Sections 1 and 4 were amended by the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307). Sections 2 and 3 were repealed by that Order. There are other amendments to the 1961 Act which are not relevant to this Order.
- (2) 1965 c. 56. Section 3 was amended by section 70 of, and paragraph 3 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). Section 4 was amended by section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71). Section 5 was amended by section 67 of the Planning and Compensation Act 1991; section 80 of, and Part 2 of Schedule 18 to, the Planning and Compensation Act 1991 make provisions in respect of interest payable on compensation. Sections 9, 25 and 29 were amended by the Statute Law (Repeals) Act 1973 (c. 39). Section 11(1) and sections 31 and 32 were amended, and section 30 was substituted, by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67); sections 11(1) and 31 were also amended by section 14 of, and paragraph 12 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 of Schedule 9 to, the Courts Act 1971 (c. 23). Section 13 was amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15). Section 20 was amended by section 70 of, and paragraph 4 of Schedule 15 to, the Planning and Compensation Act 1991. Section 31 was also amended by section 70 of, and paragraph 19 of Schedule 15 to, the Planning and Compensation Act 1991. Section 125 of the Planning Act 2008 applies Part 1 of the 1965 Act with modifications. 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, 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, 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; and section 36(7) was inserted by section 22(1) of, and paragraph 4 of Schedule 7 to, the Local Government (Wales) Act 1994. 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) 1990 c. 8. Section 206(1) was amended by section 192(8) of, and paragraphs 7 and 11 of Schedule 8 to, the Planning Act 2008. There are other amendments to the 1990 Act which are not relevant to this Order.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“the 1991 Act” means the New Roads and Street Works Act 1991(5);

“the 2008 Act” means the Planning Act 2008;

“the 2009 Act” means the Marine and Coastal Access Act 2009(6);

“access and temporary stopping up plans” means the plans certified as the access and temporary stopping up plans by the Secretary of State for the purposes of this Order;

“approved development plans” mean the plans listed below and certified as the approved development plans by the Secretary of State for the purposes of this Order—

A-9000-016 Rev.C (application boundary index plan); A-9100-006 Rev.C (application boundary sheet 1 of 9); A-9100-007 Rev.B (application boundary sheet 2 of 9); A-9100-008 Rev.B (application boundary sheet 3 of 9); A-9100-009 Rev.B (application boundary sheet 4 of 9); A-9100-010 Rev.B (application boundary sheet 5 of 9); A-9100-011 Rev.B (application boundary sheet 6 of 9); A-9100-012 Rev.B (application boundary sheet 7 of 9); A-9100-013 Rev.B (application boundary sheet 8 of 9); A-9100-014 Rev.B (application boundary sheet 9 of 9); A-5000-001 Rev.B (seawater pump station site location plan); A-5000-002 Rev.B (seawater pump station site plan); A-5000-003 Rev.B (seawater pump station ground floor plan); A-5000-004 Rev.B (seawater pump station elevations, cross section); A-6000-001 Rev.B (booster pump station and control centre location plan); A-6000-002 Rev.B (booster pump station site and location plan); A-6000-003 Rev.B (booster pump station ground floor plan and section); A-6000-004 Rev.B (booster pump station elevations); A-7000-001 Rev.B (entrance facilities site and location plans); A-7000-002 Rev.B (entrance facilities proposed barn rebuild); A-7000-003 Rev.B (entrance facilities gatehouse and farmhouse); A-2000-001 Rev.B (compressor station & electrical sub-station locations); A-2000-002 Rev.B (gas compressor compound site plan); A-2000-003 Rev.B (compressor compound floor plans); A-2000-004 Rev.B (gas compressor compound sectional elevations); A-2000-005 Rev.C (gas compressor compound equipment elevations); A-2000-006 Rev.B (gas compressor compound indicative planting); A-1000-001 Rev.C (wellhead compounds location plan); A-1000-030 Rev.B (cavern development); A-9100-015 Rev.C (temporary construction compounds index plan); A-9100-016 Rev.C (temporary construction compounds - sheet 1 of 5); A-9100-017 Rev.B (temporary construction compounds - sheet 2 of 5); A-9100-018 Rev.B (temporary construction compounds - sheet 3 of 5); A-9100-019 Rev.B (temporary construction compounds - sheet 4 of 5); A-9100-020 Rev.B (temporary construction compounds - sheet 5 of 5); MMD-277663-D-DR-00-XX-0100 (proposed access road - sheet 1 of 3); MMD-277663-D-DR-00-XX-0101 (proposed access road - sheet 2 of 3); 277663-D-DR-00-XX-0103 (proposed access road - sheet 3 of 3); C.01117.X03 (location of outfall os map); C.01121.X03 (concrete diffuser); A-9000-032 Rev.C (seawall crossing site location plan); 4726/05 Rev.B (proposed sea wall crossing of brine outfall pipe); A-9000-001 Rev.C (master plan overall); A-9000-002 Rev.C (fleetwood master plan); A-9000-003 (Preesall master plan); A-9000-005 Rev.B (master plan/metering station); A9000-014 Rev.C (master site location plan-reference drawing); A-9000-033 Rev.C (nts master plan); A-3000-010 Rev.B (metering station location plan); A-3000-001 Rev.B (plan and elevation metering station); and 14.10-WX40004-02 (landscape and ecological management strategy plan);

“the authorised development” means the development and associated development described in Schedule 1 (authorised development);

(5) 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). There are other amendments to the 1991 Act which are not relevant to this Order.

(6) 2009 c. 23.

“Blackpool Borough Council” means the Blackpool Borough Council whose address is Town Hall, Blackpool, FY1 1AD;

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

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

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

“compulsory acquisition notice” means a notice served in accordance with section 134 of the 2008 Act;

“deemed Marine Licence” means the marine licence set out in Schedule 7 (deemed licence under the Marine and Coastal Access Act 2009) and deemed by article 35 to have been granted under Part 4 of the 2009 Act, by virtue of section 149A of the 2008 Act;

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

“existing brine cavern” means any brine cavern which existed prior to the making of this Order;

“existing brine well” means any brine well which existed prior to the making of this Order;

“gas” has the same meaning as natural gas in section 235 (interpretation) of the 2008 Act;

“geology summary report” means the document entitled the geology summary report and certified as the geology summary report by the Secretary of State for the purposes of this Order;

“Halite Energy Group” means Halite Energy Group Limited (company number 04145789) whose registered office is at Unit 5, St Georges Park, Kirkham, Lancashire, PR4 2EF;

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

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

“the landscape and ecological management strategy plan” means the document entitled the landscape and ecological management strategy plan with drawing reference 14.10V2-WX40004-02 dated May 2012 and certified as the landscape and ecological management strategy plan by the Secretary of State for the purposes of this Order;

“maintain” includes maintain, inspect, repair, adjust, alter, remove, clear, refurbish, reconstruct, decommission, demolish, replace or improve the authorised development and “maintaining” and “maintenance” shall be construed accordingly;

“MMO” means the Marine Management Organisation created under the 2009 Act or any successor to its statutory functions;

“operational cavern” means an underground cavern created pursuant to the powers contained in this Order and brought into operation for the storage of gas;

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

“the Order limits” means the limits shown on the works plans within which the authorised development may be carried out;

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

“Preesall halite deposit” means the member of the Kirkham Mudstone formation being a deposit characterised by halite with varying marl content and localised mudstone interbeds,

(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. Paragraph 1(5) 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). There are other amendments to this Act which are not relevant to this Order.

more particularly described and shown as the Preesall Salt on the Geological Survey of Great Britain (England and Wales) Sheet 66, 1:50,000 Series, Solid and Drift Edition, of the British Geological Survey Classification entitled “The Geology of the country around Blackpool” dated 1990 and further described in the accompanying British Geological Survey Sheet Memoir 66;

“Preesall site” means that part of the authorised development situated to the east of the River Wyre and shown shaded green on the Preesall site plan;

“Preesall site plan” means the drawing dated 4th November 2011 and given drawing reference D-9000-032 certified as the Preesall site plan by the Secretary of State for the purposes of this Order;

“relevant planning authority” means Wyre Borough Council and any successors to its function as planning authority for the area in which the land to which the provisions of this Order apply;

“the Requirements” means the requirements set out in Schedule 9 (Requirements);

“solution mining” means the pumping of a leaching solution into the Preesall halite deposit, such that the leaching solution dissolves the halite, thereby forming a void, and is then pumped back to surface as a halite-saturated brine;

“the standard temperature and pressure” means 15 degrees centigrade and 1 bar atmospheric;

“statutory undertaker” means any person falling within section 127(8), 128(5) or 129(2) of the 2008 Act;

“street” means a street within the meaning of section 48 of the 1991 Act⁽⁸⁾, 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;

“UK marine area” has the same meaning as in section 42 of the 2009 Act⁽⁹⁾;

“the undertaker” means the person who has the benefit of this Order in accordance with articles 7 and 8;

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

(2) Save for the definition of the “undertaker”, the definitions in paragraph (1) shall not apply to Schedule 7 (deemed licence under the Marine and Coastal Access Act 2009).

(3) The definition of the “undertaker” in paragraph (1) shall not apply to Schedule 8 (protective provisions).

(4) 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.

(5) All distances, directions and lengths referred to in this Order and any document 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.

⁽⁸⁾ Section 48 is amended by the Local Transport Act 2008 (c. 26), Part 7, section 124(2).

⁽⁹⁾ 2009 c. 23.

PART 2

WORKS PROVISIONS

CHAPTER 1

Principal powers

Development consent etc. granted by the Order

3.—(1) Subject to the other terms of this Order, including the Requirements and the provisions and conditions of the deemed Marine Licence, the undertaker is granted—

- (a) development consent for the authorised development to be carried out within the Order limits; and
- (b) consent to use the authorised development for the purpose for which it is designed including use of the cavities to be created for the underground storage of gas.

(2) Paragraph (1) does not relieve the undertaker of any requirement to obtain any permit or licence under any legislation that may be required from time to time to authorise the use of the authorised development for any purpose other than the matters referred to in section 33(1) of the 2008 Act.

Maintenance of authorised development

4.—(1) Subject to—

- (a) the other terms of this Order, including the Requirements and the provisions and conditions of the deemed Marine Licence; and
- (b) any contrary provision in an agreement made under this Order,

the undertaker may at any time maintain the authorised development and may enter on any land within the Order limits if such entrance is reasonably required for the purpose of maintaining the authorised development.

(2) Subject to paragraphs (1) and (3), and to the Requirements, the power to maintain the authorised development includes the power to carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction or operation of the authorised development, namely—

- (a) works to alter the position of apparatus below ground level, including mains, sewers, drains and cables including below-ground structures associated with that apparatus within the Order limits;
- (b) works of decommissioning and demolition.

(3) Paragraph (2) shall only authorise the carrying out or maintenance of works within the Order limits.

Limits of deviation

5.—(1) The development authorised by this Order shall be constructed in the lines or situations shown on the works plans.

(2) But in constructing or maintaining the authorised development, the undertaker may deviate laterally from the lines or situations of the authorised development shown on the works plans to the extent of the limits of deviation shown on those plans.

Defence to proceedings in respect of statutory nuisance

6.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990⁽¹⁰⁾ (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 development and that the nuisance is attributable to the carrying out of the authorised development 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⁽¹¹⁾; or
 - (ii) is a consequence of the construction or maintenance of the authorised development 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 development and that the nuisance is attributable to the use of the authorised development which is being used in accordance with a scheme for noise management approved by the relevant planning authority as described in paragraph 27 of Schedule 9 (Requirements); or
 - (ii) is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), shall not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

CHAPTER 2

Benefit of Order

Benefit of Order

7. Subject to article 8 (transfer of benefit of Order), the provisions of this Order shall have effect solely for the benefit of Halite Energy Group.

Transfer of benefit of Order

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

(10) 1990 c. 43. section 82 is amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), Schedule 17 to the Environment Act 1995 (c. 25) and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

(11) 1974 c. 40. sections 61 and 65 are amended by section 133 of the Building Act 1984 (c. 55), Schedule 24 to the Environment Act 1995 (c. 25) and section 162 of, and Schedule 15 to, the Environmental Protection Act 1990 (c. 43); there are other amendments not relevant to this Order.

- (a) transfer to another person (“the transferee”) any or all of the benefit of the provisions of this Order (excluding the deemed Marine Licence referred to in paragraph (3) below) and such related 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 Licence referred to in paragraph (3) below) and such related statutory rights as may be so agreed.
- (2) Where an agreement has been made in accordance with paragraph (1) references in this Order to the undertaker shall include references to the transferee or the 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 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 Marine Licence and such related statutory rights as may be so agreed.
- (4) The Secretary of State shall consult the MMO before giving consent to the transfer or grant to another person of the whole of the benefit of the provisions of the deemed Marine Licence.
- (5) Where the undertaker has transferred any benefit or the deemed Marine Licence, or for the duration of any period during which the undertaker has granted any benefit or the deemed Marine Licence under paragraph (1) or (3)—
- (a) the benefit or the 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 transferred benefit relates;
 - (b) the transferred benefit shall reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit shall not be enforceable against the undertaker save in the case of the deemed Marine Licence transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee.
- (6) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) or (3) shall be subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by Halite Energy Group.

CHAPTER 3

Streets

Street works

9.—(1) 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 are 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;
- (e) demolish, remove, replace and relocate any bus shelter and associated bus stop infrastructure;

- (f) execute any works to provide or improve sight lines required by the highway authority; and
- (g) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c), (d), (e) and (f).

(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(12).

(3) The provisions of sections 54 to 106 of the 1991(13) 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 save that it shall further include a bus shelter and associated bus stop infrastructure.

Power to alter layout, etc., of streets

10.—(1) The undertaker may alter the layout of or carry out any ancillary works in the street specified in column (2) of Schedule 3 (streets subject to alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without prejudice to the specific powers conferred by article 3 or paragraph (1) but subject to paragraph (3), the undertaker may, for the purposes of constructing and maintaining the authorised development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limiting the scope of this paragraph, the undertaker may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycle track or verge; and
- (c) reduce the width of the carriageway of the street.

(3) The powers conferred by paragraph (2) shall not be exercised without the consent of the street authority but such consent shall not be unreasonably withheld.

(4) The alteration of the layout of any street carried out pursuant to paragraph (1) or (2) shall be completed to the reasonable satisfaction of the street authority.

Maintenance of altered streets

11.—(1) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall, unless otherwise agreed with the street authority, be maintained by and at the expense of the undertaker.

(2) 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.

(3) For the purposes of a defence under paragraph (2), the court shall in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;

(12) Section 48 is amended by the Local Transport Act 2008 (c. 26) section 124(2); section 51 is amended by Schedule 1 to the Traffic Management Act 2004 (c. 18).

(13) Sections 54 to 106 are amended by Schedule 7 to the Road Traffic Act 1991 (c. 40), Schedule 1 to the Water Consolidation (Consequential Provisions) Act 1991 (c. 60), sections 255 and 256 of the Transport Act 2000 (c. 38), sections 40 to 64 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18), Schedule 3 to the Flood and Water Management Act 2010 (c. 29), and regulation 17 of S.I. 2007/1951; there are other amendments that are not relevant to this Order.

- (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 reasonable 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.

Temporary stopping up of streets and rights of way

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

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

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

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

(4) The undertaker shall restore to the reasonable satisfaction of the highway authority any street that has been temporarily stopped up, altered or diverted under paragraph (1) or (3).

(5) The undertaker shall not temporarily stop up, alter or divert—

- (a) any street or right of way specified as mentioned in paragraph (3) without first consulting the highway authority; and
- (b) any other street without the consent of the highway 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.

Access to works

13. The undertaker may, for the purposes of the construction or the maintenance of the authorised development—

- (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 development.

Agreements with street authorities

- 14.**—(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) the construction of any new street including any structure carrying the street over or under any part of the authorised development;
 - (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 9(1) (street works).
- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
 - (b) include an agreement between the undertaker and street authority specifying a reasonable time for completion of the works; and
 - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

CHAPTER 4

Supplemental powers

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 or maintenance of the authorised development 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(14) (right to communicate with public sewers).

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

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

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

(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.

(14) 1991 c. 56; section 106 is 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.

(7) This article does not authorise the discharge or entry into inland fresh waters or coastal waters of any matter whose entry or discharge into those waters is prohibited by regulation 38 of the Environmental Permitting (England and Wales) Regulations 2010⁽¹⁵⁾.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to the Homes and Communities Agency, the Environment Agency or a harbour authority within the meaning of section 57 of the Harbours Act 1964⁽¹⁶⁾ (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 Water Resources Act 1991 have the same meaning as in that Act.

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 development; or
- (b) after the completion of that part of the authorised development 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 development 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 shall, 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 41 (arbitration).

⁽¹⁵⁾ S.I. 2010/675.

⁽¹⁶⁾ 1964 c. 40; there are amendments to section 57 that are not relevant to this Order.

(7) The undertaker shall 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 development 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 development,

the undertaker shall 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 10(2) of the 1965 Act (compensation for injurious affection).

(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 development; 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 development.

Authority to survey and investigate the land

17.—(1) The undertaker may for the purposes of this Order enter on any land shown within the Order limits or which may be affected by the authorised development 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 or subsoil or to 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 or investigation of land or the 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 shall compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

PART 3

ACQUISITION AND POSSESSION OF LAND

CHAPTER 1

Powers of acquisition

Compulsory acquisition of land

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

(2) As from the date on which a compulsory acquisition notice under section 134(3) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, all rights, trusts and incidents to which that land or that part of it which is vested (as the case may be) was previously subject are discharged or suspended, so far as their continuance would be inconsistent with the exercise of the powers under this Order.

(3) Any person who suffers loss by 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.

(4) This article is subject to article 20 (acquisition of subsoil only) and article 23 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of rights

19.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and shown on the land plans.

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights is acquired shall be discharged from all rights, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

(3) Subject to section 8 of the 1965 Act, as substituted by article 28 (acquisition of part of certain properties), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

(4) 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.

Acquisition of subsoil only

20.—(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 18 (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 28 (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.

Power to override easements and other rights

21.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, notwithstanding that it involves—

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

(2) In this article “authorised activity” means—

- (a) the erection, construction or carrying out, or maintenance of any building or work on land;
- (b) the erection, construction, or maintenance of anything in, on, over or under land; or
- (c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article the interest, right or restriction shall be extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(5) In respect of any interference, breach, extinguishment, abrogation or discharge in pursuance of this article, compensation—

- (a) shall be payable under section 7 or 10 of the 1965 Act⁽¹⁷⁾; and
- (b) shall be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(6) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (5), and
- (b) fails to discharge that liability,

the liability shall be enforceable against that undertaker.

(7) Nothing in this article shall be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

⁽¹⁷⁾ There are amendments that are not relevant to this Order.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

22.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(18) shall apply as if this Order were a compulsory purchase order and as if the undertaker were a public authority under section 1(2) of that Act.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, 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 Compulsory Purchase (Vesting Declarations) Act 1981 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.

CHAPTER 2

Temporary possession of land

Temporary use of land for carrying out the authorised development

23.—(1) The undertaker may, in connection with the carrying out of the authorised development—

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule;
- (b) remove any buildings and vegetation from that land; and

- (c) construct temporary works (including the provision of means of access) and buildings on that land.
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.
- (3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 6 (land of which temporary possession may be taken) unless and to the extent that it is authorised to do so by the acquisition of rights over land or the creation of new rights over land pursuant to article 19 (compulsory acquisition of rights) of this Order.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to replace a building removed under this article.
- (5) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of any power conferred by this article.
- (6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (7) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) 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 over any part of that land under article 19 (compulsory acquisition of rights); or
 - (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 20 (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(19) (refusal to give possession to acquiring authority) shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised development

- 24.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—
- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised development;
 - (b) enter on any land within the Order limits for the purpose of gaining access as is reasonably required for the purpose of maintaining the authorised development; and

(19) Section 13 is amended by section 139 of the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) shall not authorise the undertaker to take temporary possession of—
- (a) any house or garden belonging to a house; or
 - (b) any building (other than a house) if it is for the time being occupied.
- (3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may remain in possession of land under this article only for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The undertaker shall pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the provisions of this article.
- (7) Any dispute as to a person’s entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.
- (8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).
- (9) Where the undertaker takes possession of land under this article, the undertaker 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 development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

CHAPTER 3

Compensation

Disregard of certain interests and improvements

25.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal shall not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

Set-off for enhancement in value of retained land

26.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal shall set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil), under article 19 (compulsory acquisition of rights), the tribunal shall set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act shall have effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

No double recovery

27. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions under this Order.

CHAPTER 4

Supplementary

Acquisition of part of certain properties

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Statutory undertakers

29. The undertaker may—

- (a) acquire compulsorily 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) within the Order limits extinguish the rights of, or remove, replace, reposition, renew, alter and supplement the apparatus belonging to, statutory undertakers shown on the access and temporary stopping up plans and described in the book of reference; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

Recovery of costs of new connections

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

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

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

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

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003⁽²⁰⁾; and

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

Time limit for exercise of authority to acquire land compulsorily

31.—(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 Compulsory Purchase (Vesting Declarations) Act 1981⁽²¹⁾ as applied by article 22 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 23 (temporary use of land for carrying out the authorised development) 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.

Private rights of way

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

⁽²⁰⁾ 2003 c. 21; there are amendments to section 151 that are not relevant to this Order.

⁽²¹⁾ 1981 c. 66.

- (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⁽²²⁾ (power of entry),

whichever is the earlier.

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

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

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

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

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

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of 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 of way specified in the notice; and

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

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

- (a) is made with a person in or to whom the right of way 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.

Rights under or over streets

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

⁽²²⁾ Section 11 is amended by Schedule 4 to the Acquisition of Land Act 1981 (c. 67), Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c. 71), the Church of England (Miscellaneous Provisions) Measure 2006 No. 1 Schedule 5 paragraph 12(1) and the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009 (S.I. 2009/1307).

(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.

PART 4

MISCELLANEOUS AND GENERAL

Application of landlord and tenant law

34.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised development 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 development, 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.

Deemed licence for purposes of the 2009 Act

35. The undertaker is deemed to have been granted a licence under Part 4 of the 2009 Act⁽²³⁾ to carry out the works described in Schedule 7 (deemed licence under the Marine and Coastal Access

(23) 2009 c. 23; there are amendments that are not relevant to this Order.

Act 2009), subject to the provisions set out in that Schedule, which are deemed to have been attached to the licence by the Secretary of State under Part 4 of the 2009 Act.

Operational land for purposes of the 1990 Act

36. Development consent granted by this Order shall be treated as specific planning permission for the purposes of section 264(3)(a) of the 1990 Act (cases in which land is to be treated as not being operational land for the purposes of that Act).

Felling or lopping of trees or shrubs

37.—(1) The undertaker may fell or lop any tree or shrub near any part of the authorised development, 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 development or any apparatus used in connection with the authorised development; or
- (b) from constituting a danger to persons using the authorised development.

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

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

Protective provisions

38. Schedule 8 (protective provisions) has effect.

Certification of plans etc.

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

- (a) the access and temporary stopping up plans;
- (b) the approved development plans;
- (c) the book of reference;
- (d) the environmental statement;
- (e) Flints Caravan Park plan;
- (f) geology summary report;
- (g) Harbour Village plan;
- (h) Kneps Farm Holiday Park plan;
- (i) the land plans;
- (j) the landscape and ecological management strategy plan; and
- (k) Preesall site plan,

for certification that they are true copies of the plans or 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.

Service of notices

40.—(1) A notice or other document required or authorised to be served, given or supplied under this Order may be served, given or supplied in any of these ways—

- (a) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied;
- (b) by leaving it at the usual or last known place of abode of that person or, in a case where an address for service has been given by that person, at that address;
- (c) by sending it by post, addressed to that person at that person’s usual or last known place of abode or, in a case where an address for service has been given by that person, at that address;
- (d) by sending it in a prepaid registered letter, or by the recorded delivery service, addressed to that person at that person’s usual or last known place of abode or, in a case where an address for service has been given by that person, at that address;
- (e) in a case where an address for service using electronic communications has been given by that person, by sending it using electronic communications, in accordance with the condition set out in paragraph (2), to that person at that address;
- (f) in the case of an incorporated company or body—
 - (i) by delivering it to the secretary or clerk of the company or body at their registered or principal office;
 - (ii) by sending it by post, addressed to the secretary or clerk of the company or body at that office; or
 - (iii) by sending it in a prepaid registered letter or, or by the recorded delivery service, addressed to the secretary or clerk of the company or body at that office.

(2) The condition mentioned in paragraph (1)(e) is that the notice or other document must be—

- (a) capable of being accessed by the person mentioned in that provision;
- (b) legible in all material respects; and
- (c) in a form sufficiently permanent to be used for subsequent reference.

(3) For the purposes of paragraph (2), “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.

Arbitration

41. Any difference or dispute under any provision of this Order (other than a difference or dispute which falls to be determined by the tribunal) shall, unless otherwise provided for in this Order and unless otherwise agreed between the parties, 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 President of the Institution of Civil Engineers.

Requirements

42.—(1) Schedule 9 (Requirements) has effect.

(2) Save for paragraph 4(1) and (2) (detailed design approval) of Schedule 9 (Requirements), Schedule 9 shall not apply to—

- (a) Work Nos. 16J, 16K and 16L of Schedule 1 (authorised development) so far as these fall within the UK marine area; and

- (b) the incorporation of filters into the existing water intake structure comprised in Work No. 15 of Schedule 1 (authorised development).

Appeals relating to decisions under Requirements

43.—(1) Where the relevant planning authority—

- (a) refuses an application for any consent, agreement or approval of that authority required by a Requirement or grants that consent, agreement or approval subject to conditions; or
- (b) does not give notice to the undertaker of its decision on an application for any consent, agreement or approval of that authority required by a Requirement within 8 weeks beginning with the day immediately following that on which the application is received by that authority or within such extended period as may at any time be agreed upon in writing between the undertaker and that authority,

article 41 (arbitration) does not apply but the undertaker may by notice appeal to the Secretary of State.

(2) Any appeal to the Secretary of State under paragraph (1) shall be made under Part 3 (control over development) of the 1990 Act as if the Requirement which is the subject of the appeal were a condition under subsection 78(1)(b) of the 1990 Act.

Crown land

44.—(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 to take, use, enter upon or in any manner interfere with any land, hereditaments, or rights of whatsoever description (including any part of the shore or bed of the sea or any river, channel, creek, bay or estuary) belonging to—

- (a) Her Majesty in right of Her Crown and under the management of the Crown Estate Commissioners, without the consent in writing of those Commissioners; or
- (b) 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
- (c) Her Majesty in right of the Duchy of Lancaster, without the consent in writing of the Chancellor of the Duchy.

(2) No interest in Crown land may be acquired compulsorily under this Order unless the appropriate Crown authority consents to the acquisition.

(3) A consent under paragraph (1) or (2) may be given unconditionally or subject to such conditions or upon such terms as may be considered necessary or appropriate.

Signed by authority of the Secretary of State

17th July 2015

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