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STATUTORY INSTRUMENTS

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**2020 No. 547**

**The Cleve Hill Solar Park Order 2020**

**PART 1**

**PRELIMINARY**

**Citation and commencement**

**1.** This Order may be cited as the Cleve Hill Solar Park Order and comes into force on 19th June 2020

**Interpretation**

**2.—(1)** In this Order—

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

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

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

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

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

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

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

“the 2004 Act” means the Energy Act 2004**(8)**;

“the 2008 Act” means the Planning Act 2008**(9)**;

“the 2009 Act” means the Marine and Coastal Access Act 2009**(10)**;

“authorised development” means the development and associated development described in Part 1 of Schedule 1;

“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 under article 34 (certification of plans and documents, etc.);

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**(1)** 1961 c.33.

**(2)** 1965 c.56.

**(3)** 1980 c.66.

**(4)** 1981 c.66.

**(5)** 1989 c.29.

**(6)** 1990 c.8.

**(7)** 1991 c.22. Section 48(sA) was inserted by section 124 of the Local Transport Act 2008 (C.26). Sections 78(4), 80(4), and 83(4) were amended by section 40 of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

**(8)** 2004 c.20.

**(9)** 2008 c.29.

**(10)** 2009 c.23.

“cable circuits” means an electrical conductor necessary to transmit electricity between two points within the authorised development and may include one or more auxiliary cables for the purpose of gathering monitoring data;

“cable systems” means an electrical conductor comprising a single 400 kilovolt circuit with three conducting cores or similar equivalent design;

“CCTV” means a closed circuit television security system;

“commence”, means, (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licence, save for pre-construction monitoring surveys approved under the deemed marine licence and (b) in respect of any other works comprised in the authorised development, save for site preparation works, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised development and the words “commencement” and “commenced” must be construed accordingly;

“construction compound” means a compound including central offices, welfare facilities, accommodation facilities, and storage for construction of the authorised development;

“energy storage” means equipment used for the storage of electrical energy;

“environmental statement” means the document certified as the environmental statement by the Secretary of State for the purposes of this Order under article 34 (certification of plans and documents, etc.) as supplemented by the documents set out in Schedule 10;

“existing access road” means the existing access road between the existing substation and Seasalter Road;

“existing flood defence” means the existing bund and integrated infrastructure located beneath the path known as the Saxon Shore Way and on the north and west boundaries of the authorised development in Work No. 9;

“existing overhead line” means an 11 kilovolt overhead line owned and operated by UK Power Networks plc located to the south west of Cleve Hill within the Order limits;

“existing substation” means the existing substation at Cleve Hill Faversham ME13 9EF owned and operated by National Grid Electricity Transmission plc;

“highway” and “highway authority” have the same meaning as in the 1980 Act<sup>(11)</sup>;

“inverter” means electrical equipment fitted to mounting structures required to convert direct current power generated by the solar modules to alternating current;

“land plan” means the plan or plans certified as the land plan or plans by the Secretary of State for the purposes of this Order under article 34 (certification of plans and documents, etc.);

“the location, order limits and grid coordinates plan” means the plan certified as the location, order limits and grid coordinates plan by the Secretary of State for the purposes of this Order under article 34 (certification of plans and documents, etc.);

“maintain” includes inspect, upkeep, repair, adjust, alter, remove, reconstruct and replace to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly;

“MHWS” means the highest level which spring tides reach on average over a period of time;

“MMO” means the Marine Management Organisation, Lancaster House. Hampshire Court. Newcastle upon Tyne, NE4 7YH;

“mounting structure” means a frame or rack made of galvanised steel or other material designed to support the solar modules and inverters and mounted in piles driven into the ground;

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(11) “highway” is defined in section 328(1) for “highway authority” see section 1.

“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 land plans and works plan within which the authorised development may be carried out and land acquired or used;

“outline battery safety management plan” means the document certified as the outline battery safety management plan by the Secretary of State for the purposes of this Order under article 34 (certification of plans and documents, etc.) and which sets out the battery safety management principles to be included in the battery safety management plan pursuant to Requirement 3 of Schedule 1, Part 2;

“outline construction environmental management plan” means the document certified as the outline construction environmental management plan by the Secretary of State for the purposes of this Order under article 34 (certification of plans and documents, etc.);

“outline decommissioning and restoration plan” means the document certified as the outline decommissioning and restoration plan by the Secretary of State for the purposes of this Order under article 34 (certification of plans and documents, etc.);

“outline design principles” means the document certified as the outline design principles by the Secretary of State for the purposes of this Order under article 34 (certification of plans and documents, etc.);

“outline ecological management plan” means the document certified as the outline ecological management plan by the Secretary of State for the purposes of this Order under article 34 (certification of plans and documents, etc.);

“outline landscape and biodiversity management plan” means the document certified as the outline landscape and biodiversity management plan by the Secretary of State for the purposes of this Order under article (certification of plans and documents, etc.);

“outline skills, supply chain and employment plan” means the document certified as the outline skills, supply chain and employment plan by the Secretary of State for the purposes of this Order under article 34 (certification of plans and documents, etc.);

“outline special protection area construction noise management plan” means the document certified as the outline special protection area construction noise management plan by the Secretary of State for the purposes of this Order under article 34 (certification of plans and documents, etc.);

“outline written scheme of investigation” means the document certified as the outline written scheme of investigation by the Secretary of State for the purposes of this Order under article 34 (certification of plans and documents, etc.);

“permissive paths” means new access tracks providing restricted public access within the Order limits along the route shown on the rights of way plan;

“relevant planning authority” means the planning authority for the area to which the provision relates;

“requirements” means those matters set out in Part 2 of Schedule 1 (requirements) to this Order;

“rights of way plan” means the plan certified as the rights of way plan by the Secretary of State for the purposes of this Order under article 34 (certification of plans and documents, etc.);

“site preparation works” means 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;

“solar module” means a solar photovoltaic panel designed to convert solar irradiance to electrical energy fitted to mounting structures;

“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;

“streets and access plan” means the plan certified as the streets and access plan by the Secretary of State for the purposes of this Order under article 34 (certification of plans and documents, etc.);

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act<sup>(12)</sup>;

“substation” means a compound, containing electrical equipment required to switch, transform, convert electricity and provide reactive power compensation, with welfare facilities, external landscaping and means of access;

“transformer” means a structure containing electrical switch gear serving to transform electricity generated by the solar modules to a higher voltage;

“undertaker” means Cleve Hill Solar Park Limited (company number 08904850);

“watercourse” has the meaning given in the Land Drainage Act 1991<sup>(13)</sup>; and

“works plan” means the plan certified as the works plan by the Secretary of State for the purposes of the Order under article 34 (certification of plans and documents, etc.).

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

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

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

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

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

## PART 2

### PRINCIPAL POWERS

#### **Development consent etc. granted by this Order**

3.—(1) Subject to the provisions of this Order and the requirements the undertaker is granted development consent for the authorised development to be carried out within the Order limits.

(2) Each numbered work must be situated within the corresponding numbered area shown on the works plan.

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<sup>(12)</sup> “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act (c.7).  
<sup>(13)</sup> 1991 c.59, section 72(1).

### **Power to maintain authorised development**

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.

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

(3) This article only authorises the carrying out of maintenance works within the Order limits.

### **Consent to transfer benefit of Order**

5.—(1) Except as otherwise provided in this Order, the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Subject to paragraph (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 (including the deemed marine licence, in whole or in part) and such related statutory rights as may be agreed between the undertaker and the transferee; and

(b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order (including the deemed marine licences, in whole or in part) and such related statutory rights as may be so agreed,

except where paragraph (7) applies, in which case no consent of the Secretary of State is required.

(3) Where an agreement has been made in accordance with paragraph (2) references in this Order to the undertaker, except in paragraphs (6) and (8), are to include references to the transferee or lessee.

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

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

(6) Where the undertaker has transferred any benefit, or for the duration of any period during which the undertaker has granted any benefit, under paragraph (2)—

(a) the benefit transferred or granted (“the transferred benefit”) must 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 will reside exclusively with the transferee or, as the case may be, the lessee and the transferred benefit will not be enforceable against the undertaker; and

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

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

(a) the transferee or lessee is the holder of a licence under section 6 (licences authorising supply etc) of the 1989 Act; or

(b) the time limits for claims for compensation in respect of the acquisition of land or effects upon land under this Order have elapsed and—

(i) no such claims have been made;

(ii) any such claim has been made and has been compromised or withdrawn;

(iii) compensation has been paid in final settlement of any such claim;

- (iv) payment of compensation into court has taken place in lieu of settlement of any such claim; or
- (v) it has been determined by a tribunal or court of competent jurisdiction in respect of any such claim that no compensation will be payable.

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

(9) The notice required under paragraphs and (8) must—

(a) state—

- (i) the name and contact details of the person to whom the benefit of the provisions will be transferred or granted;
- (ii) subject to paragraph (10), the date on which the transfer will take effect;
- (iii) the provisions to be transferred or granted;
- (iv) the restrictions, liabilities and obligations that, in accordance with paragraph (6)(c), will apply to the person exercising the powers transferred or granted; and
- (v) where paragraph (7) does not apply, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land; and

(b) be accompanied by—

- (i) where relevant, a plan showing the works or areas to which the transfer or grant relates; and
- (ii) a copy of the document effecting the transfer or grant signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted.

(10) The date specified under paragraph (9)(a)(ii) in respect of a notice served in respect of paragraph (8) must not be earlier than the expiry of five days from the date of the receipt of the notice.

(11) The notice given under paragraph (8) must be signed by the undertaker and the person to whom the benefit of the powers will be transferred or granted as specified in that notice.

(12) Sections 72(7) and (8) (variation, suspension, reservation and transfer) of the 2009 Act do not apply to a transfer or grant of the whole or part of the benefit of the provisions of the deemed marine licences to another person by the undertaker pursuant to an agreement under paragraph (1).

(13) The provisions of articles 8 (street works), 10 (temporary stopping up of streets), 16 (compulsory acquisition of land), 18 (compulsory acquisition of rights), 24 (temporary use of land for carrying out the authorised development) and (temporary use of land for maintaining the authorised development) are to have effect only for the benefit of the named undertaker and a person who is a transferee or lessee who is also—

- (a) in respect of Work Nos. 1 to 9 a person who holds a licence under the 1989 Act; or
- (b) in respect of functions under article 0 (street works) relating to street, a street authority.

### **Application and modification of legislative provisions**

6. The provisions of the Neighbourhood Planning Act 2017<sup>(14)</sup> insofar as they relate to temporary possession of land under articles 24 (temporary use of land for carrying out the authorised development) and 25 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction of any work or the carrying out of any operation

<sup>(14)</sup> 2017 c.20.

required for the purpose of, or in connection with, the construction, operation or maintenance of any part of the authorised development.

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

7.—(1) Where proceedings are brought under section 82(1) (summary proceedings by a person aggrieved by statutory nuisance) of the Environmental Protection Act 1990<sup>(15)</sup> in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order may 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<sup>(16)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) 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), do not apply where the consent relates to the use of premises by the undertaker for purposes of, or, in connection with, the construction or maintenance of the authorised development.

## **PART 3 STREETS**

### **Street works**

8.—(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 is within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place and keep apparatus under the street;
- (d) maintain apparatus in the street, change its position or remove it;
- (e) repair, replace or otherwise alter the surface or structure of it; and
- (f) execute any works required for or incidental to any works referred to in sub-paragraphs to .

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<sup>(15)</sup> 1990 c.43

<sup>(16)</sup> 1974 c.40. Sections 61(9) and 65(8) were amended by section 162 of, and paragraph 15 of Schedule 3 to, the Environmental Protection Act 1990, c.25. There are other amendments to the 1974 Act which are not relevant to the Order.

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

### **Application of the 1991 Act**

9.—(1) The provisions of the 1991 Act mentioned in paragraph that apply in relation to the carrying out of street works under that Act and any regulations made or code of practice issued or approved under those provisions apply (with all necessary modifications) in relation to—

- (a) the carrying out of works under article 0 (street works); and
- (b) the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under article 11 (temporary stopping up of streets),

whether or not the carrying out of the works or the stopping up, alteration or diversion constitutes street works within the meaning of that Act.

(2) The provisions of the 1991 Act(17) are—

- (a) subject to paragraph , section 55 (notice of starting date of works);
- (b) section 57 (notice of emergency works);
- (c) section 60 (general duty of undertakers to co-operate);
- (d) section 68 (facilities to be afforded to street authority);
- (e) section 69 (works likely to affect other apparatus in the street);
- (f) section 76 (liability for cost of temporary traffic regulation);
- (g) section 77 (liability for cost of use of alternative route); and
- (h) all provisions of that Act that apply for the purposes of the provisions referred to in sub-paragraphs to .

(3) Section 55 of the 1991 Act as applied by paragraph has effect as if references in section 57 of that Act to emergency works included a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

### **Temporary stopping up of streets**

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

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

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

(5) The undertaker must not temporarily stop up, alter, divert or use as a temporary working site—

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



- (a) any street referred to in paragraph without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to the consent.

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

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

### **Temporary stopping up of public rights of way**

**11.** The undertaker may, in connection with the carrying out of the authorised development, temporarily stop up each of the public rights of way specified in column (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 shown on the rights of way plan.

### **Agreements with street authorities**

- 12.—**(1) A street authority and the undertaker may enter into agreements with respect to—
- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order; or
  - (b) the carrying out in the street of any of the works referred to in article 8(1) (street works).
- (2) Such 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.

## **PART 4**

### **SUPPLEMENTAL POWERS**

#### **Discharge of water**

**13.—**(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 subject to the obtaining of consent and approval respectively pursuant to paragraphs and below.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991 (**18**) (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

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**(18)** 1991 c.56. Section 106 was amended by section 35(8)(a) of the Competition and Service (Utilities) Act 1992 (c.43) and 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.

to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) The undertaker must not carry out any works to or make any opening into any public sewer or drain pursuant to article 13(1) except—

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

(5) The undertaker must 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 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016<sup>(19)</sup>.

(8) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Environmental Permitting (England and Wales) Regulations 2016 have the same meaning as in those Regulations.

(9) 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 or approval under paragraph that person is deemed to have granted consent or given approval, as the case may be.

### **Protective work to buildings**

**14.**—(1) Subject to the following provisions of this article, the undertaker may at its own expense carry out such protective works to any building located 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 construction of any part of the authorised development in the vicinity of the building; 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 five 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 powers 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 and )—

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

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<sup>(19)</sup> S.I. 2016/1154.

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works to a building;
- (b) a power under paragraph to enter a building and land within its curtilage;
- (c) a power under paragraph to enter a building and land within its curtilage; or
- (d) a power under paragraph 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 the power and, in a case falling within sub-paragraph , , specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph , or , 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 of 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 35 (arbitration).

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

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of five 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 construction, operation or maintenance of that part of the authorised development,

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

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

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

(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 that may be caused to the building by the construction, operation, maintenance or use of the authorised development; and
- (b) any works the purpose of which is to remedy any damage that has been caused to the building by the construction, operation, maintenance or use of the authorised development.

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

**15.—**(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 , 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 , carry out ecological or archaeological investigations on such land; and

- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes.
- (2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of the undertaker—
- (a) must, if so required on entering the land, produce written evidence of their authority to do so; and
  - (b) may take with them such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes may be made under this article—
- (a) in land held by or in right of the Crown without the consent of the Crown;
  - (b) in land located within the highway boundary without the consent of the highway authority; or
  - (c) in a private street without the consent of the street authority,
- but such consent must 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 in the case of a highway authority; or
  - (b) under paragraph in the case of a street authority,
- that authority is deemed to have granted consent.
- (7) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

## PART 5

### POWERS OF ACQUISITION

#### **Compulsory acquisition of land**

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

(2) This article is subject to paragraph of article 18 (compulsory acquisition of rights) and article 24 (temporary use of land for carrying out the authorised development).

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

**17.—**(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 is to be served under Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 20 (application of the 1981 Act).

(2) The authority conferred by article 24 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

### **Compulsory acquisition of rights**

**18.**—(1) Subject to paragraph , the undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 16 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this paragraph, article 19 (private rights) and article 26 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights etc. may be acquired) the undertaker’s powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land) of the 1965 Act (as substituted by paragraph of Schedule 6 (modification of compensation and compulsory purchase enactments for the creation of new rights and imposition of new restrictive covenants), where the undertaker creates or acquires an existing right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictive covenants) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights or imposition of a restriction under paragraph (1) or is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

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

### **Private rights**

**19.**—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 16 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 16 (compulsory acquisition of land)—

- (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) (power of entry) of the 1965 Act,

whichever is the earliest.

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

18 (compulsory acquisition of rights) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land by agreement); or
- (b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights or restrictive covenants over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, for as long as the undertaker remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 26 (statutory undertakers) applies.

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

- (a) any notice given by the undertaker before—
  - (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
  - (ii) the undertaker's appropriation of the land;
  - (iii) the undertaker's entry onto the land; or
  - (iv) the undertaker's taking temporary possession of the land,
 that any or all of those paragraphs do not apply to any right specified in the notice; or
- (b) any agreement made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If an agreement referred to in paragraph —

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

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

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

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

**20.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 1 (application of Act), for subsection 2 substitute—

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

(4) In section 5(2) (earliest date for execution of declaration) omit the words from “and this subsection” to the end.

(5) Section 5A (time limit for general vesting declaration) is omitted<sup>(20)</sup>.

(6) In section 5B(1) (extension of time limit during challenge) for “section 23 (application to High Court in respect of compulsory purchase order) of the Acquisition of Land Act 1981, the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 17 (time limit for exercise of authority to acquire land compulsorily) of the Cleve Hill Solar Park Order 2020.”.

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

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

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

“(2) But see article 21(3) (acquisition of subsoil only) of the Cleve Hill Solar Park Order 2020, which excludes the acquisition of subsoil only from this Schedule.”.

(10) References to the 1965 Act in the 1981 Act must be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 22 (modification of Part 1 of the Compulsory Purchase Act 1965) to the compulsory acquisition of land under this Order.

### **Acquisition of subsoil only**

**21.**—(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 16 (compulsory acquisition of land) or article 18 (compulsory acquisition of rights) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

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

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

(4) Paragraphs and are to be disregarded where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

### **Modification of Part 1 of the Compulsory Purchase Act 1965**

**22.**—(1) Part 1 (compulsory acquisition under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

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<sup>(20)</sup> Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c.22).

- (2) In section 4A(1) (extension of time limit during challenge)—  
for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 17 (time limit for exercise of authority to acquire land compulsorily) of the Cleve Hill Solar Park Order 2020”.
- (3) In section 11A (powers of entry: further notice of entry)—
- (a) in subsection (1)(a), after “land” insert “under that provision”; and
  - (b) in subsection (2), after “land” insert “under that provision”.
- (4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 17 (time limit for exercise of authority to acquire land compulsorily) of the Cleve Hill Solar Park Order 2020”.
- (5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—
- (a) for paragraphs 1(2) and 14(2) substitute—
    - “(2) But see article 21(3) (acquisition of subsoil only) of the Cleve Hill Solar Park Order 2020, which excludes the acquisition of subsoil only from this Schedule”; and
  - (b) after paragraph 29 insert—

## “PART 4

### INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 14 (protective works to buildings), article 24 (temporary use of land for carrying out the authorised development) or article 25 (temporary use of land for maintaining the authorised development) of the Cleve Hill Solar Park Order 2020.”.

#### **Rights under or over streets**

**23.—**(1) The undertaker may enter on, appropriate and use 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.

(2) Subject to paragraph , 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 does not apply in relation to—

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

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

(5) Compensation is not payable under paragraph to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act 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 development**

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

- (a) enter on and take temporary possession of any of the Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
- (c) construct temporary works, haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a temporary working site with access to the working site in connection with the authorised development;
- (e) construct any works, on that land as are mentioned in Part 1 of Schedule 1 (authorised development); and
- (f) carry out mitigation works required pursuant to the requirements in Schedule 1.

(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 must not remain in possession of any land under this article for longer than reasonably necessary and in any event must not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised development for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or otherwise acquired the land or rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace any building, structure, drain or electric line removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 2 (streets subject to street works); or
- (d) restore the land on which any works have been carried out under paragraph insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 1.

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

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

(7) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph .

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

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

### **Temporary use of land for maintaining authorised development**

**25.**—(1) Subject to paragraph , at any time during the maintenance period (as defined in paragraph (11)) relating to any part of the authorised development, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order land if such possession is reasonably required for the purpose of maintaining the authorised development; and
- (b) construct such temporary works and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

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

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

(4) The undertaker 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 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 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 , or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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

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

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

(11) In this article “the maintenance period” means the period of 5 years beginning with the date on which a phase of the authorised development first exports electricity to the national electricity transmission network.

### **Statutory undertakers**

- 26.** Subject to the provisions of Schedule 7 (protective provisions) the undertaker may—
- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plan (as certified by the Secretary of State in accordance with article 34) within the Order land; and
  - (b) extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

### **Recovery of costs of new connections**

**27.—(1)** Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 26 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 26 (statutory undertakers), any person who is—

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

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

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

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003<sup>(21)</sup>; and

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

## **PART 6**

### **OPERATIONS**

### **Operation of generating stations**

**28.—(1)** The undertaker is authorised to use and operate the generating stations comprised in the authorised development.

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

### **Deemed marine licence under the 2009 Act**

**29.** The deemed marine licence set out in Schedule 8 (deemed marine licence under the 2009 Act), is deemed to be granted on the date this Order comes into force to the undertaker under Part

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(21) 2003 c.21

4 (marine licensing) of the 2009 Act for the licensed marine activities set out in Part 1, and subject to the conditions set out in Part 2 of that Schedule.

## PART 7

### MISCELLANEOUS AND GENERAL

#### Application of landlord and tenant law

**30.**—(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 may prejudice the operation of any agreement to which this article applies.

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

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

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

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

#### Felling or lopping of trees

**32.**—(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 from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must not do any unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from such activity.

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

### **Trees subject to tree preservation orders**

**33.**—(1) The undertaker may fell or lop any tree within or overhanging land within the Order limits subject to a tree preservation order 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 development or any apparatus used in connection with the authorised development.

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

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

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

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

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

### **Certification of plans and documents, etc.**

**34.**—(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 Crown land plan;

(c) the environmental statement;

(d) the land plans;

(e) the location, order limits and grid coordinates plans;

(f) the outline battery safety management plan;

(g) the outline construction environmental management plan;

(h) the outline decommissioning and restoration plan;

(i) the outline design principles;

(j) the outline landscape and biodiversity management plan;

(k) the outline special protection area construction noise management plan;

(l) outline skills, supply chain and employment plan;

(m) the outline written scheme of investigation;

(n) the rights of way plan;

(o) the special category land plan – open space;

(p) the statutory / non-statutory nature conservation designations plan;

(q) the statutory / non-statutory historic environment designations plan;

(r) the streets and access plan;

(s) the water bodies in a river basin management plan; and

(t) the works plan;

for certification that they are true copies of those plans and documents.

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

### **Arbitration**

**35.**—(1) Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled in arbitration in accordance with the rules set out in Schedule 9 (arbitration rules) of this Order, by a single arbitrator to be agreed upon by the parties, within 14 days of receipt of the notice of arbitration, or if the parties fail to agree within the time period stipulated, to be appointed on application of either party (after giving written notice to the other) by the Secretary of State.

### **Requirements, appeals, etc.**

**36.**—(1) Where an application is made to, or a request is made of, the relevant planning authority or any other relevant person for any agreement or approval required or contemplated by any of the provisions of this Order, such agreement or approval must, if given, be given in writing and must not be unreasonably withheld or delayed.

(2) Part 3 (procedure for discharge of requirements) of Schedule 1 has effect in relation to all agreements or approvals granted, refused or withheld in relation to requirements included in Part 2 of that Schedule.

### **Crown rights**

**37.**—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and in particular, nothing in this Order authorises the undertaker or any licensee to take possession of, 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)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

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

### **Protective provisions**

**38.** Schedule 7 (protective provisions) has effect.

### **Funding**

**39.**—(1) The undertaker must not exercise the powers conferred by the provisions referred to in paragraph in relation to any Order land unless it has first put in place either—

- (a) a guarantee and the amount of that guarantee approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2); or

(b) an alternative form of security and the amount of that security for that purpose approved by the Secretary of State in respect of the liabilities of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2).

(2) The provisions are—

- (a) article 16 (compulsory acquisition of land);
- (b) article 18 (compulsory acquisition of rights);
- (c) article 19 (private rights);
- (d) article 21 (acquisition of subsoil only);
- (e) article 23 (rights under or over streets);
- (f) article 24 (temporary use of land for carrying out the authorised development);
- (g) article 25 (temporary use of land for maintaining the authorised development); and
- (h) article 26 (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation pursuant to the provisions referred to in paragraph (2) is to be treated as enforceable against the guarantor or person providing the alternative form of security by any person to whom such compensation is payable and must be in such a form as to be capable of enforcement by such a person.

(4) Nothing in this article requires a guarantee or alternative form of security to be in place for more than 15 years after the date on which the relevant power is exercised.

Signed by Authority of the Secretary of State for Business, Energy and Industrial Strategy

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

28th May 2020