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STATUTORY INSTRUMENTS

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**2021 No. 1414**

**The Norfolk Boreas Offshore Wind Farm Order 2021**

**PART 5**

**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 construction, operation or maintenance of the authorised project or to facilitate, or is incidental to, it.

(2) This article is subject to article 19 (time limit for exercise of authority to acquire land compulsorily), article 20 (compulsory acquisition of rights and the imposition of restrictive covenants), article 24 (acquisition of subsoil and airspace only), article 25 (rights under or over streets), article 26 (temporary use of land for carrying out the authorised project) and article 41 (Crown rights).

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

**19.**—(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 may be served under Part 1 of the 1965 Act (which makes provision for compulsory purchase under the Acquisition of Land Act 1981); and
- (b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 22 (application of the 1981 Act).

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised project) 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 and the imposition of restrictive covenants**

**20.**—(1) Subject to the provisions of this article, 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 18 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) Subject to the provisions of this article, article 21 (private rights) and article 29 (statutory undertakers), in the case of the Order land specified in column (1) of Part 1 of Schedule 6 (land in which only new rights etc. may be acquired) in the event of scenario 1, or column (1) of Part 2 of Schedule 6 (land in which only new rights etc. may be acquired) in the event of scenario 2, 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 the relevant Part of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act, as modified by paragraph 5 of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires an existing right over land or restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 7 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 under paragraphs (1) and (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

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

### **Private rights**

**21.—**(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 18 (compulsory acquisition of land) are suspended and unenforceable or, where so notified by the undertaker to the person with the benefit of such private rights or restrictive covenants, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the powers under article 18.

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 20 (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 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 (determination of questions of disputed compensation).

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

- (6) Paragraphs (1) to (3) 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 (6)(b)—

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

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**

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

(2) The 1981 Act, as so applied, 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) Section 5 (earliest date for execution of declaration) is omitted.

(5) Section 5A (time limit for general vesting declaration) is omitted<sup>(1)</sup>.

(6) In section 5B (extension of time limit during challenge)<sup>(2)</sup>—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Norfolk Boreas Offshore Wind Farm Order 2021”.

(7) In section 6 (notices after execution of declaration), in subsection (1)(b) for “section 15 of, or paragraph 5 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), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” are omitted.

(9) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration)<sup>(3)</sup>, for paragraph 1(2) substitute—

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(1) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 c. 22

(2) Inserted by section 202(2) of the Housing and Planning Act 2016 c. 22.

(3) Inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 c. 22.

“But see article 24(3) (acquisition of subsoil and airspace only) of the Norfolk Boreas Offshore Wind Farm Order 2021, which excludes the acquisition of subsoil and airspace 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 of the 2008 Act (as modified by article 23 (application of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order.

### **Application of Part 1 of the 1965 Act**

**23.**—(1) Part 1 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.

(2) In section 4A(1) (extension of time limit during challenge)(4)—

- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the 2008 Act (legal challenges relating to applications for orders granting development consent)”; and
- (b) for “the three year period specified in section 4” substitute “the five year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the Norfolk Boreas Offshore Wind Farm Order 2021”.

(3) 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 19 (time limit for exercise of authority to acquire land compulsorily) of the Norfolk Boreas Offshore Wind Farm Order 2021”

### **Acquisition of subsoil or airspace only**

**24.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) or article 20 (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 or airspace 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 or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act, as modified by article 23 (application of Part 1 of 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 (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory or airspace above a house, building or factory.

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

**25.**—(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 project and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised project.

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(4) Inserted by section 202(1) of the Housing and Planning Act 2016 c. 22.

(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) 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 (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, 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 (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Temporary use of land for carrying out the authorised project**

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

- (a) enter on and take temporary possession of—
  - (i) the land specified in columns (1) and (2) of Part 1 of Schedule 8 (land of which temporary possession may be taken) in the event of scenario 1, or the land specified in columns (1) and (2) of Part 2 of Schedule 8 (land of which temporary possession may be taken) in the event of scenario 2, for the purpose specified in relation to that land in column (3) of the relevant Part of that Schedule; and
  - (ii) any other Order land in respect of which no notice of entry has been served under section 11 (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), running tracks, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised project; and
- (e) construct any works, or use the land, as specified in relation to that land in column 3 of Part 1 of Schedule 8 (land of which temporary possession may be taken) in the event of scenario 1, or column 3 of Part 2 of Schedule 8 in the event of scenario 2, or any mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 1.

(2) 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.

(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

- (a) in the case of land specified in paragraph 1(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Part 1 of Schedule 8 (land of which temporary possession may be taken) in the event of scenario 1, or that land in column (4) of Part 2 of Schedule 8 in the event of scenario 2; or

- (b) in the case of land specified in paragraph 1(a)(ii) after the end of the period of one year beginning with the date of completion of the part of the authorised project 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 Part 1 of Schedule 2 (streets subject to street works) in the event of scenario 1, or Part 2 of Schedule 2 (streets subject to street works) in the event of scenario 2; or
  - (d) restore the land on which any works have been carried out under paragraph (1) 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 (5), 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 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from—
- (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 20 (compulsory acquisition of rights) to the extent that such land is listed in column (1) Part 1 of Schedule 6 (land in which new rights etc., may be acquired) in the event of scenario 1, or column (1) Part 2 of Schedule 6 (land in which new rights etc., may be acquired) in the event of scenario 2; or
  - (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 24 (acquisition of subsoil or airspace only).
- (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.

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

27.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project; and
  - (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) 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 is not required to comply with paragraph (3) in a case of emergency and if an emergency exists they must—
- (a) give to the owners and occupiers of the land in question notice of its intended entry or (as the case may be) of its having entered onto the land as soon as is reasonably practicable; and
  - (b) comply with paragraph (1) so far as is reasonably possible in the circumstances.
- (5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.
- (6) 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.
- (7) 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.
- (8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (9) 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 maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (7).
- (10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (11) 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 of the 2008 Act (application of compulsory acquisition provisions).
- (12) In this article “the maintenance period” means—
- (a) for the district of North Norfolk, the period referred to in requirement 19(2) in relation to the maintenance of landscaping;
  - (b) in relation to any other part of the authorised project, means the period of 5 years beginning with the date on which the authorised project first exports electricity to the national electricity transmission network.

### **Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession**

**28.**—(1) This article applies to any Order land of which the undertaker takes temporary possession under article 26 (temporary use of land for carrying out the authorised project).

(2) Subject to paragraph (3), all private rights or restrictive covenants in relation to apparatus belonging to National Grid removed from any land to which this article applies will remain intact from the date on which the undertaker gives up temporary possession of that land.

(3) If the undertaker, in agreement with National Grid, gives notice before the date that the undertaker gives up temporary possession of the land that any or all of the private rights or restrictive covenants in relation to apparatus belonging to National Grid removed from the land to which this article applies will be extinguished, such rights will be extinguished.

(4) Any extinguishment of rights by paragraph (3) does not give rise to any cause of action relating to the presence on or in the land of any foundations and the undertaker is not required to remove foundations when giving up temporary possession).

### **Statutory undertakers**

**29.** Subject to the provisions of Schedule 17 (protective provisions) the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers 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**

**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 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 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,

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 paragraph—

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

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.