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STATUTORY INSTRUMENTS

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**2022 No. 433**

**The East Anglia TWO Offshore Wind Farm Order 2022**

**PART 1**

Preliminary

**Citation and commencement**

- 1.—(1) This Order may be cited as the East Anglia TWO Offshore Wind Farm Order 2022.  
(2) This Order comes into force on 22nd April 2022.

**Commencement Information**

- II** Art. 1 in force at 22.4.2022, see [art. 1\(2\)](#)

**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 2003 Act” means the Communications Act 2003(8);
  - “the 2004 Act” means the Energy Act 2004(9);
  - “the 2008 Act” means the Planning Act 2008;
  - “the 2009 Act” means the Marine and Coastal Access Act 2009(10);
  - “the 2017 Regulations” means the Conservation of Habitats and Species Regulations 2017(11);

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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.  
(8) 2003 c. 21.  
(9) 2004 c. 20.  
(10) 2009 c. 23.  
(11) S.I. 2017/1012.

“access to works plan” means the plan certified as the access to works plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“activity exclusion zones plan” means the plan certified as the activity exclusion zones plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“AIS” means air insulated switchgear;

“ancillary works” means—

- (a) the ancillary works described in Part 2 of Schedule 1 (ancillary works); and
- (b) any other works authorised by this Order,

to the extent that such works are not development within the meaning of section 32 of the 2008 Act;

“authorised development” means the development described in Part 1 of Schedule 1 (authorised development) and any other development authorised by this Order that is development within the meaning of section 32 of the 2008 Act;

“authorised project” means the authorised development and the ancillary works;

“best practice protocol for minimising disturbance to red-throated diver” means the document certified as the best practice protocol for minimising disturbance to red-throated diver by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“book of reference” means the document certified as the book of reference by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

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

“buoy” means any floating device used for navigational purposes or measurement purposes, including LiDAR buoys, wave buoys and guard buoys;

“cable” in respect of any onshore cable includes direct lay cables, cables laid in cable ducts or protective covers and in respect of any cable whether onshore or offshore includes fibre optic cables either within the cable or laid alongside;

“cable crossings” means the crossing of existing sub-sea cables or pipelines or other existing infrastructure by the inter-array, platform link or export cables authorised by this Order together with physical protection measures including cable protection;

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

“cable protection” means measures to protect cables from physical damage and including, but not limited to, the use of bagged solutions filled with grout or other materials, protective aprons or coverings, mattresses, flow energy dissipation devices or rock and gravel burial;

“cable sealing end compound” means a compound containing electrical equipment (including sealing ends, post insulators and earth switches), access, fencing and other associated equipment, structures or buildings;

“carriageway” has the same meaning as in the 1980 Act<sup>(12)</sup>;

“commence” means—

- (a) in relation to works seaward of MHWS, the first carrying out of any licensed marine activities authorised by the deemed marine licences, save for operations consisting of offshore preparation works or pre-construction monitoring surveys approved under the deemed marine licences; and
- (b) in respect of any other works comprised in the authorised project, the first carrying out of any material operation (as defined in section 155 of the 2008 Act) forming part of the authorised project other than onshore preparation works;

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(12) “carriageway” is defined in section 329(1).

and the words “commencement” and “commenced” must be construed accordingly;

“construction consolidation site” means a construction site associated with the onshore works including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, access roads, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, wheel washing facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“construction, operation and maintenance platform” means an offshore structure housing or incorporating temporary accommodation, landing ports for vessels and helicopters, standby electricity generation equipment, marking and lighting and other equipment facilities to assist in the co-ordination of marine activities related to the authorised development;

“deemed marine licences” means the marine licences set out in Schedules 13 (deemed licence under the 2009 Act – generation assets) and 14 (deemed licence under the 2009 Act – offshore transmission assets);

“Defence Infrastructure Organisation Safeguarding” means Ministry of Defence Safeguarding, Defence Infrastructure Organisation, Kingston Road, Sutton Coldfield, West Midlands, B75 7RL and any successor body to its functions;

“distributed temperature sensing cable” means a fibre optic cable which identifies faults in the electrical cables during operation allowing the approximate location of any fault to be identified;

“East Anglia ONE North Order” means the East Anglia ONE North Offshore Wind Farm Order 2022;

“EIA Regulations” means the Infrastructure Planning (Environmental Impact Assessment) Regulations 2017;

“electrical cable” means an assembly of one or more conductors running side by side or bundled, which is used to carry electrical power;

“environmental statement” means the document certified as the environmental statement by the Secretary of State under article 36 (certification of plans etc.);

“fibre optic cable” means a cable consisting of one or more thin flexible fibres with a glass core through which signals are sent in the form of light;

“GIS” means gas insulated switchgear;

“gravity base foundation” means a structure principally of steel, concrete, or steel and concrete which rests on the seabed either due to its own weight with or without added ballast or additional skirts and associated equipment including scour protection, J-tubes, corrosion protection systems and access platforms and equipment;

“grid connection works” means Work Nos. 34 and 38 to 43 and any related associated development;

“highway” has the same meaning as in the 1980 Act<sup>M1</sup>;

[<sup>F1</sup>“highway authority” has the same meaning as in the 1980 Act]

“Historic England” means the Historic Buildings and Monuments Commission for England;

“horizontal directional drilling” is a trenchless technique for installing cables and cable ducts involving drilling in an arc between two points;

“horizontal directional drilling compound” means a construction site associated with the transmission works where horizontal directional drilling is proposed including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and

canteen and washroom facilities, wheel washing facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

“HVAC” means high voltage alternating current;

“important hedgerows and tree preservation order plan” means the document certified as the important hedgerows and tree preservation order plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“in principle monitoring plan” means the document certified as the in principle monitoring plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“in principle East Anglia TWO Project Southern North Sea SAC Site Integrity Plan” means the document certified as the in principle East Anglia TWO Project Southern North Sea SAC Site Integrity Plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“inter-array cable” means the cables linking the wind turbine generators to each other and to the offshore electrical platforms and described in paragraph (c) of Work No. 1;

“intertidal area” means the area between MHWS and MLWS;

“intrusive” means an activity that requires or is facilitated by breaking the surface of the ground or seabed (but does not include the installation of fence or signage posts);

“jacket foundation” means a steel jacket/lattice-type structure constructed of steel which is fixed to the seabed at three or more points with steel pin piles or steel suction buckets and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“jointing bay” means an excavation formed to enable the jointing of high voltage power cables;

“jointing works” means a process by which two or more cables are connected to each other by means of cable joints within a jointing bay;

“land plans” means the plans certified as the land plans (onshore) and land plans (offshore) by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“LAT” means lowest astronomical tide;

“layout principles statement” means the document certified as the layout principles statement by the Secretary of State under article 36 (certification of plans etc.);

“licensed marine activities” means the activities specified in Part 1 of the deemed Marine Licences;

“limits of deviation” means the limits for the scheduled works as shown on the works plans;

“local highway authority” has the same meaning as in section 329(1) of the 1980 Act(13);

“maintain” includes inspect, upkeep, repair, adjust, and alter and further includes remove, reconstruct and replace (but only in relation to any of the ancillary works in Part 2 of Schedule 1 (ancillary works) and any component part of any wind turbine generator, offshore electrical platform, construction, operation and maintenance platform or meteorological mast described in Part 1 of Schedule 1 (authorised development) not including the alteration, removal or replacement of foundations), to the extent assessed in the environmental statement; and “maintenance” must be construed accordingly;

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

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(13) Section 329(1) was amended by Schedule 1(1) para. 60(2)(a) to the Infrastructure Act 2015 c. 7.

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

“meteorological mast” means an offshore mast housing equipment to measure wind speed and other wind characteristics, including a topside housing electrical, communication and associated equipment and marking and lighting;

“MMO” means the Marine Management Organisation;

“monopile foundation” means a steel pile, typically cylindrical, driven and/or drilled into the seabed and associated equipment including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“national grid substation” means a compound containing electrical equipment (including power transformers, gantries, switchgear, reactive compensation equipment, electrical protection equipment devices (disconnectors, circuit breakers), harmonic filters, cables and back-up generators), control buildings, lightning protection masts, communications masts, access, fencing and other associated equipment, structures or buildings;

“offshore electrical platform” means a platform with one or more decks, whether open or fully clad, accommodating electrical power transformers, low, medium and/or high voltage switch gear, instrumentation, protection and control systems, neutral earthing resistors, reactive compensation, standby electrical generation equipment, fuelling facilities, surface water drainage system, auxiliary and uninterruptible power supply systems and transformers, accommodation, emergency shelter, craneage, metering stations, meteorological equipment, helicopter landing facilities, messing facilities, potable water storage, black water separation equipment, control hub, drainage facilities, access equipment, J-tubes, marking and lighting and other associated equipment and facilities to enable the transmission of electronic communications and for electricity to be collected at, and exported from, the platform;

“offshore ornithology without prejudice compensation measures” means the document certified as the offshore ornithology without prejudice compensation measures by the Secretary of State under article 36 (certification of plans etc.);

“offshore platforms” means the construction, operation and maintenance platform and the offshore electrical platforms;

“offshore preparation works” means surveys, monitoring and UXO clearance activities seaward of MHWS undertaken prior to the commencement of construction to prepare for construction;

“offshore works” means Work Nos. 1 to 5 and, to the extent that it comprises works that are seaward of MHWS, Work No. 6;

“onshore preparation works” means operations consisting of site clearance, demolition work, early planting of landscaping works, archaeological investigations, environmental surveys, ecological mitigation, 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 temporary means of enclosure, creation of site accesses, footpath creation, erection of welfare facilities and the temporary display of site notices or advertisements;

“onshore substation” means a compound containing electrical equipment (including power transformers, gantries, switchgear, reactive compensation equipment, electrical protection equipment devices (disconnectors, circuit breakers), harmonic filters, cables and back-up generators), control buildings, lightning protection masts, communications masts, access, fencing and other associated equipment, structures or buildings;

“onshore works” means the transmission works and the grid connection works;

“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;

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

“Order limits boundary coordinates plan (offshore)” means the document certified as the Order limits boundary coordinates plan (offshore) by the Secretary of State under article 36 (certification of plans etc.);

“outline access management plan” means the document certified as the outline access management plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline code of construction practice” means the document certified as the outline code of construction practice by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline construction traffic management plan” means the document certified as the outline construction traffic management plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline fisheries liaison and coexistence plan” means the document certified as the outline fisheries liaison and coexistence plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline landfall construction method statement” means the document certified as the outline landfall construction method statement by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline landscape and ecological management strategy” means the document certified as the outline landscape and ecological management strategy by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline navigation monitoring strategy” means the document certified as the outline navigation monitoring strategy by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline offshore operations and maintenance plan” means the document certified as the outline offshore operations and maintenance plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline operational drainage management plan” means the document certified as the outline operational drainage management plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline port construction traffic management and travel plan” means the document certified as the outline port construction traffic management and travel plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline pre-commencement archaeology execution plan” means the document certified as the outline pre-commencement archaeology execution plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline public rights of way strategy” means the document certified as the outline public rights of way strategy by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline *Sabellaria* reef management plan” means the document certified as the outline *Sabellaria* reef management plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);



“outline Sizewell Gap construction method statement” means the document certified as the outline Sizewell Gap construction method statement by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline SPA crossing method statement” means the document certified as the outline SPA crossing method statement by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline travel plan” means the document certified as the outline travel plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline watercourse crossing method statement” means the document certified as the outline watercourse crossing method statement by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline written scheme of investigation (offshore)” means the document certified as the outline written scheme of investigation (offshore) by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“outline written scheme of investigation (onshore archaeology)” means the document certified as the outline written scheme of investigation (onshore archaeology) by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“owner”, in relation to land, has the same meaning as in section 7 of the Acquisition of Land Act 1981(14);

“permanent stopping up of public rights of way plan” means the plan certified as the permanent stopping up of public rights of way plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“pin piles” means steel cylindrical piles driven and/or drilled into the seabed to secure steel jacket foundations;

“platform link cables” means the cables linking offshore platforms to one another and described in Work No. 4;

“relevant highway authority” means the highway authority for the area in which the land to which the relevant provision of this Order applies is situated;

“relevant lead local flood authority” means the lead local flood authority for the area in which the land to which the relevant provision of this Order applies is situated;

“relevant local highway authority” means the local highway authority for the area in which the land to which the relevant provision of this Order applies is situated;

“relevant planning authority” means the district planning authority for the area in which the land to which the relevant provision of this Order applies is situated;

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

“SAC” means special area of conservation;

“scheduled works” means the numbered works specified in Part 1 of Schedule 1 (authorised development) to this Order, or any part of them;

“Sizewell C order limits interaction – offshore plan” means the plan certified as the Sizewell C order limits interaction – offshore plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“SPA” means special protection area;

“stage” means a section or part of the authorised development as identified as a stage in a written scheme approved under requirement 11 (stages of authorised development onshore);

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(14) 1981 c. 67. Section 7 was amended by section 70 of, and paragraph 9 of Schedule 15 to, the Planning and Compensation Act 1991 (c. 34). There are other amendments to the 1981 Act which are not relevant to this Order.

“statutory nature conservation body” means the appropriate nature conservation body as defined in regulation 5 of the 2017 Regulations;

“statutory undertaker” means any person falling within section 127(8) of the 2008 Act and a public communications provider as defined in section 151 of the 2003 Act;

“street” means a street within the meaning of section 48 of the 1991 Act<sup>(15)</sup>, together with land on the verge of a street or between two carriageways, and includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act<sup>(16)</sup>;

“substations design principles statement” means the document certified as the substations design principles statement by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“suction caisson” means large diameter steel cylindrical shells which penetrate the seabed assisted by a hydrostatic pressure differential for securing steel jacket foundations;

“suction caisson foundation” means a tubular steel structure which penetrates the seabed assisted by a hydrostatic pressure differential and associated equipment, including scour protection, J-tubes, corrosion protection systems and access platform(s) and equipment;

“temporary stopping up of public rights of way plan” means the plan certified as the temporary stopping up of public rights of way plan by the Secretary of State for the purposes of this Order under article 36 (certification of plans etc.);

“transition bay” means an underground pit where the offshore export cables are jointed to the onshore cables;

“transmission works” means Work Nos. 6 to 37 and any related associated development;

“trenchless technique” means a method of installation that allows ducts and cables to be installed under an obstruction without breaking open the ground and digging a trench (examples of such techniques include horizontal directional drilling, thrust boring, auger boring and pipe ramming);

“trenchless technique compound” means a construction site associated with the transmission works where a trenchless technique is proposed including hard standings, lay down and storage areas for construction materials and equipment, areas for spoil, areas for vehicular parking, bunded storage areas, areas for welfare facilities including offices and canteen and washroom facilities, wheel washing facilities, workshop facilities and temporary fencing or other means of enclosure and areas for other facilities required for construction purposes;

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

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

“undertaker” means East Anglia TWO Limited (company number 11121842);

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

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

“wind turbine generator” means a structure comprising a tower, rotor with three blades connected at the hub, nacelle and ancillary electrical and other equipment which may include J-tube(s), transition piece, access and rest platforms, access ladders, boat access systems,

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<sup>(15)</sup> Section 48 was amended by section 124(2) of the Local Transport Act 2008 (c. 26).

<sup>(16)</sup> “street authority” is defined in section 49, which was amended by paragraph 117 of Schedule 1 to the Infrastructure Act 2015 (c. 7).



corrosion protection systems, fenders and maintenance equipment, helicopter landing facilities and other associated equipment, fixed to a foundation; and

“works plans” means the plans certified as the works plans (onshore) and works plans (offshore) by the Secretary of State for the purposes of this Order under article 36 (certification of plans 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 land.

(3) All distances, directions and lengths referred to in this Order are approximate, save in respect of the parameters referred to in—

- (a) requirements 2 to 9 in Part 3 of Schedule 1 (requirements);
- (b) conditions 1 to 9 in Part 2 of Schedule 13 (conditions); and
- (c) conditions 1 to 5 in Part 2 of Schedule 14 (conditions).

(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 plans.

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

#### Textual Amendments

- F1** Words in [art. 2\(1\)](#) inserted (22.12.2022) by [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), [art. 1\(2\)](#), [Sch.](#)

#### Commencement Information

- I2** Art. 2 in force at 22.4.2022, see [art. 1\(2\)](#)

#### Marginal Citations

- M1** “highway” is defined in section 328(1) ... [Editorial note: Words in [art. 2\(1\)](#) footnote omitted (22.12.2022) by virtue of [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), [art. 1\(2\)](#), [Sch.](#)]

## PART 2

### Principal Powers

#### Development consent etc. granted by the Order

3.—(1) Subject to the provisions of this Order and to the requirements the undertaker is granted—

- (a) development consent for the authorised development; and
- (b) consent for the ancillary works,

to be carried out within the Order limits.

(2) Each of the scheduled works must be constructed and maintained within the limits of deviation for that work.

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**Commencement Information**

**I3** Art. 3 in force at 22.4.2022, see [art. 1\(2\)](#)

**Power to maintain authorised project**

4.—(1) The undertaker may at any time maintain the authorised project, 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 of the 2009 Act (marine licensing) for offshore works not covered by the deemed marine licences.

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**Commencement Information**

**I4** Art. 4 in force at 22.4.2022, see [art. 1\(2\)](#)

**Benefit of the Order**

5.—(1) Subject to this article 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 and such related statutory rights as may be agreed between the undertaker and the transferee;
- (b) grant to another person (“the lessee”) for a period agreed between the undertaker and the lessee any or all of the benefit of the provisions of this Order and such related statutory rights as may be so agreed,

except where paragraph (8) applies, in which case no consent of the Secretary of State is required.

(3) Subject to paragraph (4), the undertaker may with the written consent of the [<sup>F2</sup>Secretary of State]—

- (a) where an agreement has been made in accordance with paragraph (2)(a), transfer to the transferee the whole of any of the deemed marine licences and such related statutory rights as may be agreed between the undertaker and the transferee; or
- (b) where an agreement has been made in accordance with paragraph (2)(b), grant to the lessee, for the duration of the period mentioned in paragraph (2)(b), the whole of any of the deemed marine licences and such related statutory rights as may be so agreed,

except where paragraph (8) applies, in which case no consent of the Secretary of state is required.

(4) The Secretary of State must consult the MMO before giving consent to the transfer or grant to another person of any or all of the benefit of the provisions of any of the deemed marine licences.

(5) Where an agreement has been made in accordance with paragraph (2) or (3) references in this Order to the undertaker, except in paragraph (6), (7) or (9), include references to the transferee or lessee.

(6) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant [<sup>F3</sup>under paragraph (2)] are subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

- (7) Where an agreement has been made [<sup>F4</sup>in accordance with paragraph (2) or (3)]—
- (a) the benefit (“the transferred benefit”) includes 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 resides exclusively with the transferee or, as the case may be, the lessee and the transferred benefit is not enforceable against the undertaker save in the case of a deemed marine licence transferred or granted in respect of any breach of an obligation by the undertaker which occurs prior to such transfer or grant or which occurs as a result of any activity carried out by the undertaker on behalf of the transferee.
- (8) This paragraph applies where—
- (a) the transferee or lessee is a person who holds a licence under 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 is payable.
- (9) The provisions of article 8 (street works), article 12 (temporary stopping up of streets), article 18 (compulsory acquisition of land), article 20 (compulsory acquisition of rights), article 26 (temporary use of land for carrying out the authorised project) and article 27 (temporary use of land for maintaining the authorised project) have effect only for the benefit of the named undertaker and a person who is a transferee or lessee and is also—
- (a) in respect of Work Nos. 6 to 43 a person who holds a licence under the 1989 Act; or
  - (b) in respect of functions under article 8 (street works) relating to a street, a street authority.
- (10) Prior to any transfer or grant under this article taking effect the undertaker must provide written notification to the Secretary of State and, if such transfer or grant relates to the exercise of powers in their area, to the MMO and the relevant planning authority.
- (11) A notice required under paragraph (10) 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 (12), 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), will apply to the person exercising the powers transferred or granted; and
    - (v) where paragraph (8) does not apply, confirmation of the availability and adequacy of funds for compensation associated with the compulsory acquisition of the Order land.
  - (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.

(12) The date specified under paragraph (11)(a)(ii) must not be earlier than the expiry of 14 days from the date of the receipt of the notice.

(13) The notice given under paragraph (11) 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.

(14) Section 72(7) and (8) of the 2009 Act do not apply to a transfer or grant of the benefit of the provisions of any of the deemed marine licences to another person by the undertaker pursuant to an agreement under this article.

#### Textual Amendments

- F2** Words in art. 5(3) substituted (22.12.2022) by [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), art. 1(2), [Sch.](#)
- F3** Words in art. 5(6) substituted (22.12.2022) by [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), art. 1(2), [Sch.](#)
- F4** Words in art. 5(7) substituted (22.12.2022) by [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), art. 1(2), [Sch.](#)

#### Commencement Information

- I5** Art. 5 in force at 22.4.2022, see [art. 1\(2\)](#)

### Application and modification of legislative provisions

6.—(1) Regulation 6 of the Hedgerows Regulations 1997(17) is modified so as to read for the purposes of this Order only as if there were inserted after paragraph (1)(j)—

“or

- (k) for carrying out development that has been authorised by an order granting development consent pursuant to the Planning Act 2008.”

(2) The provisions of the Neighbourhood Planning Act 2017(18) insofar as they relate to temporary possession of land under articles 26 (temporary use of land for carrying out the authorised project) and 27 (temporary use of land for maintaining the authorised project) of this Order do not apply in relation to the construction of works carried out for the purpose of, or in connection with, the construction or maintenance of the authorised project.

#### Commencement Information

- I6** Art. 6 in force at 22.4.2022, see [art. 1\(2\)](#)

### Defence to proceedings in respect of statutory nuisance

7.—(1) Where proceedings are brought under section 82(1) of the Environmental Protection Act 1990(19) (summary proceedings by person aggrieved by statutory nuisance) in relation to a nuisance falling within paragraph (g) of section 79(1) of that Act (noise emitted from premises so as to be

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(17) [S.I. 1997/1160](#).

(18) [2017 c. 20](#).

(19) [1990 c. 43](#). Section 82 was amended by section 107 and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25), section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), and section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and section 79 was amended by sections 101 and 102 of the Clean Neighbourhoods and Environment Act 2005 (c. 16), and by section 120 and paragraph 89 of Schedule 22 to the Environment Act 2005. There are other amendments to this Act which are not relevant to the Order.

prejudicial to health or a nuisance)(20) 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 project and that the nuisance is attributable to the carrying out of the authorised project in accordance with a notice served under [<sup>F5</sup>section 60 (control of noise on construction sites)] or a consent given under [<sup>F5</sup>section 61 (prior consent for work on construction sites)] of the Control of Pollution Act 1974(21); or
  - (ii) is a consequence of the construction or maintenance of the authorised project and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the use of the authorised project and that the nuisance is attributable to the use of the authorised project which is being used in compliance with requirement 27 (control of noise during operational phase); or
  - (ii) is a consequence of the use of the authorised project and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974 does 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 project.

#### Textual Amendments

- F5** Words in art. 7(1)(a)(i) substituted (22.12.2022) by The East Anglia TWO Offshore Wind Farm (Correction) Order 2022 (S.I. 2022/1399), art. 1(2), Sch.

#### Commencement Information

- I7** Art. 7 in force at 22.4.2022, see art. 1(2)

## PART 3

### Streets

#### Street works

**8.**—(1) The undertaker may, for the purposes of the authorised project, enter on so much of any of the streets specified in Schedule 2 (streets subject to street works) as is within the Order limits and may—

- (a) break up or open the street or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus under the street;
- (d) maintain apparatus under the street or change its position; and

(20) Section 79(1) was amended by sections 101 and 102 of the Clean Neighbourhoods and Environment Act 2005 (c. 16).

(21) 1974 c. 40. Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15 of Schedule 15 to the Environmental Protection Act 1990 (c. 43) and Schedule 24 to the Environment Act 1995 (c. 25). There are other amendments to the 1974 Act which are not relevant to the Order.

(e) execute any works required for or incidental to any works referred to in sub-paragraphs (a) to (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (streets, street works and undertakers) and 51(1) (prohibition of unauthorised street works) of the 1991 Act.

(3) In this article “apparatus” has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act<sup>(22)</sup>.

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#### Commencement Information

**I8** Art. 8 in force at 22.4.2022, see [art. 1\(2\)](#)

#### Application of the 1991 Act

9.—(1) The provisions of the 1991 Act mentioned in paragraph (2) 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 8 (street works); and
- (b) the temporary stopping up, temporary alteration or temporary diversion of a street by the undertaker under article 12 (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<sup>(23)</sup> are—

- (a) subject to paragraph (3), 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 [F6 sub-paragraphs] (a) to (g).

(3) Section 55 of the 1991 Act as applied by paragraph (2) 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.

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#### Textual Amendments

**F6** Word in [art. 9\(2\)\(h\)](#) substituted (22.12.2022) by [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), [art. 1\(2\)](#), [Sch.](#)

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#### Commencement Information

**I9** Art. 9 in force at 22.4.2022, see [art. 1\(2\)](#)

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<sup>(22)</sup> “apparatus” is defined in section 89(3) and section 105(1).

<sup>(23)</sup> Sections 55, 57, 60, 68 and 69 were amended by the Traffic Management Act 2004 (c. 18).



## Public rights of way

**10.**—(1) With effect from the date of certification by the local highway authority that the relevant alternative right of way has been created to the standard defined in the public rights of way strategy, the section of the public right of way (being a footpath) specified in columns (1), (2) and (3) of Schedule 4 (footpaths to be stopped up) is extinguished.

(2) With effect from that same date, the alternative section of the footpath specified in column (4) of Schedule 4 (footpaths to be stopped up) or as otherwise approved by the relevant local highway authority is created.

(3) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act<sup>(24)</sup>.

### Commencement Information

**I10** Art. 10 in force at 22.4.2022, see [art. 1\(2\)](#)

## Temporary stopping up of public rights of way

**11.**—(1) The undertaker may, in connection with the carrying out of the authorised project, temporarily stop up each of the public rights of way specified in column (2) of Schedule 3 (public rights of way to be temporarily stopped up) to the extent specified in column (3), by reference to the letters shown on the temporary stopping up of public rights of way plan.

(2) The public rights of way specified in Schedule 3 (public rights of way to be temporarily stopped up) shall not be temporarily stopped up under this article unless the alternative public right of way described in column (4) of Schedule 3 or as otherwise approved by the relevant local highway authority, is first provided by the undertaker to the standard defined in the public rights of way strategy, to the reasonable satisfaction of the relevant local highway authority.

(3) The relevant diversion route provided under paragraph (2) shall be subsequently maintained by the undertaker until the re-opening of the relevant public right of way specified in paragraph (1).

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

### Commencement Information

**I11** Art. 11 in force at 22.4.2022, see [art. 1\(2\)](#)

## Temporary stopping up of streets

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

- (a) divert the traffic or a class of traffic from the street; and
- (b) subject to paragraph (3), 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.

<sup>(24)</sup> Part 1 was amended by s.192(1) of the Housing and Planning Act 2016 (c. 22) and Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009, S.I. 2009/1307.

(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 5 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the works plans, in column (3) of that Schedule.

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

- (a) any street referred to in paragraph (4) without first consulting the street authority;
- (b) any street referred to in Schedule 3 (public rights of way to be temporarily stopped up) without first consulting the local highway authority; and
- (c) 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 (5)(c) that street authority is deemed to have granted consent.

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**Commencement Information**

**I12** Art. 12 in force at 22.4.2022, see [art. 1\(2\)](#)

**Access to works**

**13.—**(1) The undertaker may, for the purposes of the authorised project—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 6 (access to works); and
- (b) with the approval of the relevant highway authority after consultation with the relevant planning authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised project.

(2) If the relevant highway authority fails to notify the undertaker of its decision within 28 days of receiving an application for approval under paragraph (1)(b) that relevant highway authority is deemed to have granted approval.

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**Commencement Information**

**I13** Art. 13 in force at 22.4.2022, see [art. 1\(2\)](#)

**Agreements with street authorities**

**14.—**(1) A street authority and the undertaker may enter into agreements with respect to—

- (a) any temporary stopping up, alteration or diversion of a street authorised by this Order;
- (b) the construction of any new street authorised by this Order; or
- (c) the carrying out in the street of any of the works referred to in article [8\(1\)](#) (street works).

- (2) Such an agreement may, without prejudice to the generality of paragraph (1)—
  - (a) make provision for the street authority to carry out any function under this Order which relates to the street in question;
  - (b) include an agreement between the undertaker and street authority specifying a reasonable time for the completion of the works; and
  - (c) contain such terms as to payment and otherwise as the parties consider appropriate.

**Commencement Information**

**I14** Art. 14 in force at 22.4.2022, see [art. 1\(2\)](#)

**Highway alterations**

**15.**—(1) The undertaker may carry out highway alterations comprised within Work Nos. 35, 36 and 37 in the plots numbered 148 to 182 on the land plans.

(2) The highway alterations must be carried out in accordance with plans approved by the highway authority, such approval not to be unreasonably withheld.

(3) If the highway authority fails to notify the undertaker of its decision within 28 days of receiving plans for approval under paragraph (2), the highway authority is deemed to have given approval.

**Commencement Information**

**I15** Art. 15 in force at 22.4.2022, see [art. 1\(2\)](#)

## PART 4

### Supplemental powers

**Discharge of water**

**16.**—(1) Subject to paragraphs (3) and (4) below, the undertaker may use any watercourse or any public sewer or drain for the drainage of water in connection with the carrying out or maintenance of the authorised project and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is determined as if it were a dispute under section 106 of the Water Industry Act 1991<sup>M2</sup> (right to communicate with public sewers).

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

- (4) The undertaker must not make any opening into any public sewer or drain except—
  - (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval 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, or construct any works in, under, over or within eight metres of, any watercourse forming part of a main river, or within 16 metres of a tidally influenced main river without the prior written consent of the Environment Agency.

(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) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016<sup>(25)</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 paragraphs (3) or (5) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

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#### Commencement Information

**I16** Art. 16 in force at 22.4.2022, see [art. 1\(2\)](#)

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#### Marginal Citations

**M2** [1991 c. 56](#). Section 106 was amended by section 35(8)(a) [and 43(2)] 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. [Editorial note: Words in art. 16(2) footnote inserted (22.12.2022) by virtue of [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), [art. 1\(2\)](#), [Sch.](#)]

### Authority to survey and investigate the land onshore

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

- (a) survey or investigate the land;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions on the land as the undertaker thinks fit to investigate the nature of the surface layer, subsoil and groundwater and remove soil and groundwater samples;
- (c) without prejudice to the generality of sub-paragraph (a), make trial trenches in such positions on the land as the undertaker thinks fit to carry out archaeological and site investigations;
- (d) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations or environmental monitoring on such land; and

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(25) [S.I. 2016/1154](#).

- (e) place on, leave on and remove from the land apparatus and welfare facilities for use in connection with the survey and investigation of land, environmental monitoring and making of trial holes and trial trenches.
- (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 located within the highway boundary without the consent of the highway authority; or
  - (b) in a private street without the consent of the street authority,but such consent must not be unreasonably withheld.
- (5) Following completion of any survey, monitoring or investigation works the undertaker must remove all equipment, apparatus and welfare facilities placed on the land in connection with such survey, monitoring or investigations.
- (6) 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.
- (7) If either a highway authority or a street authority which receives an application for consent fails to notify the undertaker of its decision within 28 days of receiving the application for consent—
  - (a) under paragraph (4)(a) in the case of a highway authority; or
  - (b) under paragraph (4)(b) in the case of a street authority;that authority is deemed to have granted consent.

**Commencement Information**

**I17** Art. 17 in force at 22.4.2022, see [art. 1\(2\)](#)

## 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 authorised project or to facilitate, or is incidental to, it.

(2) This article is subject to paragraph (2) of article 20 (compulsory acquisition of rights) and article 26 (temporary use of land for carrying out the authorised project).

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**Commencement Information**

**I18** Art. 18 in force at 22.4.2022, see [art. 1\(2\)](#)

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

**19.—(1)** After the end of the period of seven years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 (which makes provision for compulsory purchase under the Acquisition of Land Act 1981) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act<sup>(26)</sup> as applied by article 22 (application of the <sup>F7</sup>... 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.

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**Textual Amendments**

**F7** Words in [art. 19\(1\)\(b\)](#) omitted (22.12.2022) by virtue of [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), [art. 1\(2\)](#), [Sch.](#)

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**Commencement Information**

**I19** Art. 19 in force at 22.4.2022, see [art. 1\(2\)](#)

**Compulsory acquisition of rights**

**20.—(1)** Subject to paragraph (2), 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 28 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 7 (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 and Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act, as substituted by paragraph 9 of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions), where the undertaker creates a right or acquires an existing right over land or imposes a restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 8 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.

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<sup>(26)</sup> Section 4 was amended by sections 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).



(5) In any case where the acquisition of new rights or the imposition of restrictive covenants under paragraph (1) 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.

#### Commencement Information

**I20** Art. 20 in force at 22.4.2022, see [art. 1\(2\)](#)

#### 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) cease to have effect in so far as 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)<sup>(27)</sup>,

whichever is the earlier.

(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 (power of entry) in pursuance of the right,

whichever is the earlier.

(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 (determination of questions of disputed compensation) of the 1961 Act.

(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 28 (statutory undertakers) applies.

<sup>(27)</sup> Section 11(1) was amended by sections 186 to 188 of and Schedules 14 and 16 to, the Housing and Planning Act 2016 (c. 22), Schedule 4 to the Acquisition of Land Act 1981 (c. 67) and Schedule 5 to the Church of England (Miscellaneous Provision) Measure 2006 No 1 and Schedule 1 to the Transfer of Tribunal Functions (Lands Tribunal and Miscellaneous Amendments) Order 2009/1307.

- (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.

**Commencement Information**

**I21** Art. 21 in force at 22.4.2022, see [art. 1\(2\)](#)

**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 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) Section 5 (earliest date for execution of declaration) is omitted.
- (5) Section 5A (time limit for general vesting declaration) is omitted.
- (6) In section 5B (extension of time limit during challenge)—
- (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 seven year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the East Anglia TWO Offshore Wind Farm Order 2022”.
- (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 24(1) (acquisition of subsoil and airspace only) of the East Anglia Two Offshore Wind Farm Order 2022, which excludes the acquisition of subsoil or airspace from this Schedule.”.

(10) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 23 (application of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

#### Commencement Information

**I22** Art. 22 in force at 22.4.2022, see [art. 1\(2\)](#)

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

**23.**—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 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.

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

- (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 4” substitute “the seven year period mentioned in article 19 (time limit for exercise of authority to acquire land compulsorily) of the East Anglia TWO Offshore Wind Farm Order 2022”.

(3) In section 11A (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) ( 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 East Anglia TWO Offshore Wind Farm Order 2022”.

#### Commencement Information

**I23** Art. 23 in force at 22.4.2022, see [art. 1\(2\)](#)

### Acquisition of subsoil or airspace only

**24.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of, or the airspace over, the land referred to in 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, or an interest in the whole, of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over, 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 Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions);
  - (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
  - (c) Section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.
- (4) Paragraphs (2) and [<sup>F8</sup>(3) do] not apply where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

#### Textual Amendments

**F8** Words in art. 24(4) substituted (22.12.2022) by [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), art. 1(2), **Sch.**

#### Commencement Information

**I24** Art. 24 in force at 22.4.2022, see [art. 1\(2\)](#)

### 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.

(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.

#### Commencement Information

**I25** Art. 25 in force at 22.4.2022, see [art. 1\(2\)](#)

### 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 column (2) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) 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, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
  - (c) construct temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
  - (d) use the land for the purposes of a working site with access to the working site in connection with the authorised project; [<sup>F9</sup>and]
  - (e) construct any works, or use the land, as specified in relation to that land in column 3 of Schedule 9 (land of which temporary possession may be taken), or any [<sup>F10</sup>mitigation works of operations.]

(2) Not less than 28 days before entering on and taking temporary possession of or using 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 Schedule 9 (land of which temporary possession may be taken); 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) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article; or
- (b) restore land on which any works have been constructed under paragraph (1)(e).

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

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 (determination 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) of Schedule 7 (land in which only new rights etc. may be acquired); 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 or uses land under this article, the undertaker is not required to acquire the land or any interest in it.

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority)(28) 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).

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#### Textual Amendments

- F9** Word in art. 26(1)(d) inserted (22.12.2022) by [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), art. 1(2), [Sch.](#)
- F10** Words in art. 26(1)(e) substituted (22.12.2022) by [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), art. 1(2), [Sch.](#)
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#### Commencement Information

- I26** Art. 26 in force at 22.4.2022, see [art. 1\(2\)](#)

### 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 may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised project for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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(28) Section 13 was amended by Tribunals Courts and Enforcement Act 2007 (c. 15).



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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, must be determined under Part 1 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 project, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) 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).

(11) In this article "the maintenance period", in relation to any part of the authorised project, means—

- (a) the period of five years beginning with the date on which the authorised project first exports electricity to the national electricity transmission network except where the authorised development consists of the maintenance of any tree or shrub for which a 10 year replacement period is specified pursuant to requirement 15 (implementation and maintenance of landscaping), in which case "the maintenance period" means a period of 10 years beginning with the date on which that tree or shrub is first planted; and
- (b) any period falling between the date at which temporary possession is no longer permitted under article 26(3) and the date on which the authorised project first exports electricity to the national electricity transmission network.

**Commencement Information**

**I27** Art. 27 in force at 22.4.2022, see [art. 1\(2\)](#)

**Statutory undertakers**

**28.** Subject to the provisions of Schedule 10 (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 plans within the Order land and described in the book of reference; 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.

**Commencement Information**

**I28** Art. 28 in force at 22.4.2022, see [art. 1\(2\)](#)

**Recovery of costs of new connections**

**29.—(1)** Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 28 (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 28, 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 2003 Act; and

“public utility undertaker” means a gas, water, electricity [<sup>F11</sup>or] sewerage undertaker.

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#### Textual Amendments

**F11** Word in art. 29(4) substituted (22.12.2022) by [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), art. 1(2), [Sch.](#)

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#### Commencement Information

**I29** Art. 29 in force at 22.4.2022, see [art. 1\(2\)](#)

## PART 6

### Operations

#### Operation of generating station

**30.**—(1) The undertaker is hereby authorised to operate the generating station comprised in the authorised project.

(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.

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#### Commencement Information

**I30** Art. 30 in force at 22.4.2022, see [art. 1\(2\)](#)

#### Deemed marine licences under the 2009 Act

**31.** The marine licences set out in Schedules 13 (deemed licence under the 2009 Act – generation assets) and 14 (deemed licence under the 2009 Act – offshore transmission assets) are deemed to

have been granted to the undertaker under Part 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 each licence.

**Commencement Information**

**I31** Art. 31 in force at 22.4.2022, see [art. 1\(2\)](#)

## PART 7

### Miscellaneous and general

#### Application of landlord and tenant law

**32.**—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised project or the right to operate the same; and
- (b) any agreement entered into by the undertaker with any person for the construction, maintenance, use or operation of the authorised project, or any part of it,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants may prejudice the operation of any agreement to which this article applies.

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

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

**Commencement Information**

**I32** Art. 32 in force at 22.4.2022, see [art. 1\(2\)](#)

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

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

**Commencement Information**

**I33** Art. 33 in force at 22.4.2022, see [art. 1\(2\)](#)

### Felling or lopping of trees and removal of hedgerows

**34.**—(1) Subject to article 35 (trees subject to tree preservation orders), the undertaker may fell or lop any tree or shrub within or overhanging the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub from obstructing or interfering with the construction, maintenance or operation of the authorised project or any apparatus used in connection with the authorised project.

(2) In carrying out any activity authorised by paragraph (1), the undertaker must do no 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 (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(4) The undertaker may, for the purposes of the authorised project—

- (a) subject to paragraph (2) above, remove any hedgerows within the Order limits that may be required for the purposes of carrying out the authorised project; and
- (b) remove the important hedgerows as are within the Order limits and specified in Schedule 11 (hedgerows).

(5) In this article “hedgerow” and “important hedgerow” have the same meaning as in the Hedgerows Regulations 1997.

#### Commencement Information

**I34** Art. 34 in force at 22.4.2022, see [art. 1\(2\)](#)

### Trees subject to tree preservation orders

**35.**—(1) The undertaker may fell or lop any tree described in Schedule 12 (trees subject to tree preservation orders) or any tree within or overhanging land within the Order limits that is subject to a tree preservation order made after 25th June 2019, or cut back its roots if it reasonably believes it to be necessary in order to do so to prevent the tree—

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

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

- (a) the undertaker must not cause 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) of the 1990 Act (replacement of trees) 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 (2), or as to the amount of compensation, must be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

**Commencement Information**

**I35** Art. 35 in force at 22.4.2022, see [art. 1\(2\)](#)

**Certification of plans etc.**

**36.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of the documents listed in Schedule 17 (documents to be certified) for certification that they are true copies of the documents referred to in this Order.

(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.

(3) Where a plan or document certified under paragraph (1)—

(a) refers to a provision of this Order (including any specified requirement) when it was in draft form; and

(b) identifies that provision by a number, or combination of numbers and letters, which is different from the number, or combination of numbers and letters by which the corresponding provision of this Order is identified in the Order as made

the reference in the plan or document concerned must be construed for the purposes of this Order as referring to the provision (if any) corresponding to that provision in the Order as made.

**Commencement Information**

**I36** Art. 36 in force at 22.4.2022, see [art. 1\(2\)](#)

**Arbitration**

**37.**—(1) Subject to article 40 (saving provision for Trinity House), any dispute or difference arising out of or in connection with any provision of this Order, unless otherwise provided for, must be referred to and settled in arbitration in accordance with the rules at Schedule 15 (arbitration rules) to this Order by a single arbitrator to be agreed between 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 the application of either party (after giving notice in writing to the other) by the Secretary of State.

(2) Any matter for which the consent or approval of the Secretary of State or the Marine Management Organisation is required under any provision of this Order shall not be subject to arbitration.

**Commencement Information**

**I37** Art. 37 in force at 22.4.2022, see [art. 1\(2\)](#)

**Requirements, appeals, etc.**

**38.** Schedule 16 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals required or contemplated by the requirements within Part 3 of Schedule 1 (requirements) to this Order.

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**Commencement Information**

**I38** Art. 38 in force at 22.4.2022, see [art. 1\(2\)](#)

**Abatement of works abandoned or decayed**

**39.** Where Work No. 1(a), Work No. 1(b), Work No. 2 or Work No. 3 or any part of those works is abandoned or allowed to fall into decay the Secretary of State may, following consultation with the undertaker, issue a written notice requiring the undertaker at its own expense to repair and restore or remove Work No. 1(a), Work No. 1(b), Work No. 2 or Work No. 3 or any relevant part of those works, without prejudice to any notice served under section 105(2) of the 2004 Act<sup>(29)</sup>. The notice may also require the restoration of the site of the relevant part(s) of Work No. 1(a), Work No. 1(b), Work No. 2 or Work No. 3 to a safe and proper condition within an area and to such an extent as may be specified in the notice.

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**Commencement Information**

**I39** Art. 39 in force at 22.4.2022, see [art. 1\(2\)](#)

**Saving provisions for Trinity House**

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

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**Commencement Information**

**I40** Art. 40 in force at 22.4.2022, see [art. 1\(2\)](#)

**Crown rights**

**41.—(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 lessee or licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and [<sup>F12</sup>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 [<sup>F13</sup>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) 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.

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<sup>(29)</sup> Section 105(2) was substituted by section 69(3) of the Energy Act 2008 (c. 32).

### Textual Amendments

- F12** Words in [art. 41\(1\)\(a\)](#) substituted (22.12.2022) by [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), [art. 1\(2\)](#), [Sch.](#)
- F13** Words in [art. 41\(1\)\(b\)](#) substituted (22.12.2022) by [The East Anglia TWO Offshore Wind Farm \(Correction\) Order 2022 \(S.I. 2022/1399\)](#), [art. 1\(2\)](#), [Sch.](#)

### Commencement Information

- I41** Art. 41 in force at 22.4.2022, see [art. 1\(2\)](#)

## Protective provisions

- 42.** Schedule 10 (protective provisions) has effect.

### Commencement Information

- I42** Art. 42 in force at 22.4.2022, see [art. 1\(2\)](#)

## Funding

**43.—(1)** The undertaker must not exercise the powers conferred by the provisions referred to in paragraph (2) in relation to any land unless it has first put in place either—

- (a) a guarantee in respect of the liabilities of the undertaker to pay compensation under this Order in respect of the exercise of the relevant power in relation to that land; or
- (b) an alternative form of security for that purpose,

that has been approved by the Secretary of State.

(2) The provisions are—

- (a) [article 18](#) (compulsory acquisition of land);
- (b) [article 20](#) (compulsory acquisition of rights);
- (c) [article 21](#) (private rights);
- (d) [article 24](#) (acquisition of subsoil or airspace only);
- (e) [article 25](#) (rights under or over streets);
- (f) [article 26](#) (temporary use of land for carrying out the authorised project);
- (g) [article 27](#) (temporary use of land for maintaining the authorised project); and
- (h) [article 28](#) (statutory undertakers).

(3) A guarantee or alternative form of security given in respect of any liability of the undertaker to pay compensation under this Order is 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.

### Commencement Information

- I43** Art. 43 in force at 22.4.2022, see [art. 1\(2\)](#)



## Offshore ornithology compensation provisions

44. Schedule 18 (offshore ornithology compensation measures) has effect.

### Commencement Information

**I44** Art. 44 in force at 22.4.2022, see [art. 1\(2\)](#)

## Service of notices

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

- (a) by post;
- (b) by delivering it to the person on whom it is to be served or to whom it is to be given or supplied; or
- (c) with the consent of the recipient and subject to paragraphs (5) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to services by post) of the Interpretation Act 1978<sup>(30)</sup> as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement will be taken to be fulfilled only where—

- (a) the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission in writing or by electronic transmission;
- (b) the notice or document is capable of being accessed by the recipient;
- (c) the notice or document is legible in all material respects; and
- (d) the notice or document is in a form sufficiently permanent to be used for subsequent reference.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or part of that notice or other document the sender will provide such a copy as soon as reasonably practicable.

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(30) 1978 c. 30.

(7) Any consent to the use of electronic communication given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation will be final and will take effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

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

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

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**Commencement Information**

**I45** Art. 45 in force at 22.4.2022, see [art. 1\(2\)](#)

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

**Changes to legislation:**

There are currently no known outstanding effects for the The East Anglia TWO Offshore Wind Farm Order 2022.