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STATUTORY INSTRUMENTS

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**2023 No. 778**

**The Boston Alternative Energy Facility Order 2023**

**PART 1**

**PRELIMINARY**

**Citation and commencement**

1. This Order may be cited as the Boston Alternative Energy Facility Order 2023 and comes into force on 27th July 2023.

**Interpretation**

2.—(1) In this Order, unless otherwise stated—

“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 1984 Act” means the Road Traffic Regulation Act 1984(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 2008 Act” means the Planning Act 2008(8);

“access and rights of way plan” means the plan of that description certified by the Secretary of State as the access and rights of way plan for the purposes of this Order under article 47 (certification of documents, etc.);

“address” includes any number or address used for the purposes of electronic transmission;

“AOD” means above ordnance datum;

“apparatus” has the same meaning as in section 105(1) of the 1991 Act;

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

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(1) 1961 c. 33.  
(2) 1965 c. 56.  
(3) 1980 c. 66.  
(4) 1981 c. 66.  
(5) 1984 c. 27.  
(6) 1990 c. 8.  
(7) 1991 c. 22.  
(8) 2008 c. 29.

“book of reference” means the document of that description certified by the Secretary of State as the book of reference for the purposes of this Order under article 47 (certification of documents, etc.);

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

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

“combined heat and power assessment” means the document of that description certified by the Secretary of State as the combined heat and power assessment for the purposes of this Order under article 47 (certification of documents, etc.);

“commence” means the first carrying out of any material operation, as defined in section 155 of the 2008 Act (when development begins), comprised in or carried out for the purposes of the authorised development other than operations consisting of pre-construction ecological mitigation, archaeological investigations, environmental surveys and monitoring, investigations for the purpose of assessing ground conditions (including the making of trial boreholes), receipt and erection of construction plant and equipment, installation of construction compounds, erection of a footbridge, erection of temporary viewing structure, temporary car parking, erection of construction welfare facilities, erection of any temporary means of enclosure, the temporary display of site notices or contractors’ signage and notices and “commencement” and “commenced” are to be construed accordingly;

“commissioning” means the process of assuring that all systems and components of the authorised development or part of the authorised development (which are installed or installation is near to completion) are tested to verify that they function and are operable in accordance with design objectives, specifications and operational requirements of the undertaker and “commission” and other cognate expressions are to be construed accordingly;

“date of final commissioning” means the date on which the commissioning of Work No. 1A is completed as notified as such by the undertaker to the relevant planning authority pursuant to paragraph 20 of Schedule 2 (requirements);

“deemed marine licence” means the marine licence granted by this Order as set out in Schedule 9;

“design and access statement” means the document of that description certified by the Secretary of State as the design and access statement for the purposes of this Order under article 47 (certification of documents, etc.);

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means provided it is in an electronic form;

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the Communications Act 2003<sup>(9)</sup>;

“environmental statement” means the document of that description certified by the Secretary of State as the environmental statement for the purposes of this Order under article 47 (certification of documents, etc.) as supplemented by the documents set out in Part 2 of Schedule 10;

“flood risk activity” has the same meaning as in the Environmental Permitting (England and Wales) Regulations 2016<sup>(10)</sup>;

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<sup>(9)</sup> 2003 c. 21.

<sup>(10)</sup> S.I. 2016/1154 as defined in paragraph 3 of Part 1 of Schedule 25.

“flood risk assessment” means the document of that description certified by the Secretary of State as the flood risk assessment for the purposes of this Order under article 47 (certification of documents, etc.);

“footpath” and “footway” have the same meaning as in the 1980 Act;

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

“indicative generating station plans” means the plans of that description certified by the Secretary of State as the indicative generating station plans for the purposes of this Order under article 47 (certification of documents, etc.);

“indicative wharf plans” means the plans of that description certified by the Secretary of State as the indicative wharf plans for the purposes of this Order under article 47 (certification of documents, etc.);

“land plan and Crown land plan” means the plans of that description certified by the Secretary of State as the land plan and Crown land plan for the purposes of this Order under article 47 (certification of documents, etc.);

“limits of deviation” means the limits for the scheduled works referred to in article 7 (limits of deviation) shown for each numbered work on the works plans;

“maintain” in relation to the authorised development includes inspect, repair, adjust, alter, remove, refurbish, reconstruct, replace and improve to the extent that such works do not give rise to any materially new or materially different environmental effects than those identified in the environmental statement and “maintenance” and “maintaining” are to be construed accordingly;

“MMO” means the Marine Management Organisation;

“Navigation Management Planning Process: Risk to Birds” means the document of that description certified by the Secretary of State as the Navigation Management Planning Process: Risk to Birds for the purposes of this Order under article 47 (certification of documents, etc.);

“navigation management plan template” means the document of that description certified by the Secretary of State as the template navigation management plan for the purposes of this Order under article 47 (certification of documents, etc.);

“navigation risk assessment” means the document of that description certified by the Secretary of State as the navigation risk assessment for the purposes of this Order under article 47 (certification of documents, etc.);

“operational period” means the period from the date of final commissioning to the permanent cessation of the operation of Work No. 1A;

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

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

“OSGR” means Ordinance Survey Grid Reference;

“outline air quality and dust management plan” means the document of that description certified by the Secretary of State as the outline air quality and dust management plan for the purposes of this Order under article 47 (certification of documents, etc.);

“outline air quality deposition monitoring plan” means the document of that description certified by the Secretary of State as the outline air quality deposition monitoring plan for the purposes of this Order under article 47 (certification of documents, etc.);

“outline code of construction practice” means the document of that description certified by the Secretary of State as the outline code of construction practice for the purposes of this Order under article 47 (certification of documents, etc.);

“outline construction traffic management plan” means the document of that description certified by the Secretary of State as the outline construction traffic management plan for the purposes of this Order under article 47 (certification of documents, etc.);

“outline landscape and ecological mitigation strategy” means the document of that description certified by the Secretary of State as the outline landscape and ecological mitigation strategy for the purposes of this Order under article 47 (certification of documents, etc.);

“outline lighting strategy” means the document of that description certified by the Secretary of State as the outline lighting strategy for the purposes of this Order under article 47 (certification of documents, etc.);

“outline marine mammal mitigation protocol” means the document of that description certified by the Secretary of State as the outline marine mammal mitigation protocol for the purposes of this Order under article 47 (certification of documents, etc.);

“outline surface and foul water drainage strategy” means the document of that description certified by the Secretary of State as the outline surface and foul water drainage strategy for the purposes of this Order under article 47 (certification of documents, etc.);

“outline written scheme of investigation” means the document of that description certified by the Secretary of State as the outline written scheme of investigation for the purposes of this Order under article 47 (certification of documents, etc.);

“owner”, in relation to land, has the same meaning as in section 7(11) (interpretation) of the Acquisition of Land Act 1981;

“register of environmental actions and commitments” means the document of that description certified by the Secretary of State as the register of environmental actions and commitments for the purposes of this Order under article 47 (certification of documents, etc.);

“relevant planning authority” means—

- (a) Lincolnshire County Council for the purposes of article 15 (access to works) and the following requirements in Schedule 2 (requirements) to this Order—
  - (i) requirement 7;
  - (ii) requirement 8;
  - (iii) requirement 9;
  - (iv) requirement 13;
  - (v) requirement 14;
  - (vi) requirement 17;
  - (vii) requirement 18;
  - (viii) requirement 21;
  - (ix) requirement 24; and
  - (x) requirement 25;
- (b) Boston Borough Council for the purposes of the following requirements in Schedule 2 (requirements) to this Order—
  - (i) requirement 3;

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(11) 1981 c. 67. Section 7 was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to this section which are not relevant to this Order.

- (ii) requirement 4;
- (iii) requirement 6;
- (iv) requirement 10;
- (v) requirement 11;
- (vi) requirement 12;
- (vii) requirement 15;
- (viii) requirement 16;
- (ix) requirement 19;
- (x) requirement 22; and
- (xi) requirement 23;

“relevant planning authorities” means both Lincolnshire County Council and Boston Borough Council;

“requirements” means those matters set out in Schedule 2 to this Order;

“Roman Bank plan” means the plan titled “Roman Bank within the Order limits” certified by the Secretary of State as the Roman Bank plan for the purposes of this Order under article 47 (certification of documents, etc.);

“statutory nature conservation body” means the appropriate nature conservation body as defined in regulation 5 of the Conservation of Habitats and Species Regulations 2017<sup>(12)</sup>;

“statutory undertaker” means any person falling within section 127(8) (statutory undertakers’ land) of the 2008 Act and includes a public communications provider defined by section 151(1)<sup>(13)</sup> (interpretation of Chapter I) of the Communications Act 2003;

“street” means a street within the meaning of section 48 (streets, street works and undertakers) of the 1991 Act, together with land on the verge of a street or between two carriageways, and includes any footpath and “street” includes any part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“The Haven” means the part of the River Witham, known as The Haven;

“traffic authority” has the same meaning as in section 121A of the 1984 Act;

“undertaker” means Alternative Use Boston Projects Limited (company number 11013830, whose registered office is at 26 Church Street, Bishop’s Stortford, Hertfordshire, England, CM23 2LY) or any other person who for the time being has the benefit of this Order in accordance with articles 8 and 9 of this Order;

“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;

“working days” means Monday to Friday excluding bank holidays and other public holidays; and

“works plans” means the plans of that description certified by the Secretary of State as the works plans for the purposes of this Order under article 47 (certification of documents, etc.).

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

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<sup>(12)</sup> S.I. 2017/1012.

<sup>(13)</sup> 2003 c. 21.

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

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

(5) References in this Order to points identified by letters or numbers are to be construed as references to points so lettered or numbered on the plans to which the reference applies.

(6) References in this Order to numbered works are references to the works numbered in Schedule 1 (authorised development).

(7) References to “Schedule” are, unless otherwise stated, references to Schedules to this Order.

(8) The expression “includes” is to be construed without limitation.

(9) References to any statutory body in this Order include that body’s successor in respect of functions which are relevant to this Order.

(10) References in this Order to “part of the authorised development” are to be construed as references to stages, phases or elements of the authorised development.

## PART 2

### PRINCIPAL POWERS

#### **Development consent granted by the Order**

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

(2) Any enactment applying to land within or adjacent to the Order limits has effect subject to the provisions of this Order.

#### **Maintenance of authorised development**

4. The undertaker may at any time maintain the authorised development except to the extent that this Order or an agreement made under this Order provides otherwise.

#### **Maintenance of drainage works**

5.—(1) Nothing in this Order, or the construction, maintenance or operation of the authorised development under it, affects any responsibility for the maintenance of any works connected with the drainage of land, whether that responsibility is imposed or allocated by or under any enactment, or otherwise, unless otherwise agreed in writing between the undertaker and the person responsible.

(2) In this article “drainage” has the same meaning as in section 72 (interpretation) of the Land Drainage Act 1991(14).

#### **Operation of the authorised development**

6.—(1) The undertaker is authorised to operate the generating station comprised in the authorised development.

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(14) 1991 c. 59. The definition of “drainage” was substituted by paragraphs 191 and 194 of Schedule 22 to the Environment Act 1995 (c. 25).

(2) Other than as set out in this Order, this article does not relieve the undertaker of any requirement to obtain any permit or licence or any obligation under any legislation that may be required to authorise the operation of an electricity generating station.

### **Limits of deviation**

7.—(1) The authorised development is to be carried out and maintained within the limits of deviation shown and described on the works plans and in carrying out the authorised development the undertaker may—

- (a) deviate laterally within the limits of deviation for those works shown on the works plans to the extent the undertaker considers to be necessary or convenient;
- (b) to any extent downwards as may be necessary, convenient or expedient;
- (c) in respect of any boundary between the areas of two numbered works deviate laterally by up to 20 metres either side of the boundary as shown on the works plans, with the exception of any boundary with Work No. 1A(iv), any boundary with Work No. 2(d) and any boundary with Work No. 4,

except that these maximum limits of deviation do not apply where it is demonstrated by the undertaker to the Secretary of State's satisfaction and the Secretary of State, following consultation by the undertaker with the relevant planning authority, the relevant statutory nature conservation body and the Environment Agency to the extent that it relates to matters relevant to their functions, certifies accordingly that a deviation in excess of these limits would not give rise to any materially new or materially different environmental effects in comparison with those reported in the environmental statement.

(2) Part 2 (procedure for discharge of requirements) of Schedule 2 (requirements) applies to an application to the Secretary of State for certification under paragraph (1) as though it were an approval required by a requirement under that Schedule.

### **Benefit of this Order**

8.—(1) Subject to paragraphs (2) and (3) and (4) and article 9 (consent to transfer benefit of the Order), the provisions of this Order have effect solely for the benefit of the undertaker.

(2) Paragraph (1) does not apply to the works for which consent is granted by this Order for the express benefit of the owners and occupiers of land, statutory undertakers and other persons affected by the authorised development.

(3) Paragraph (1) does not apply to Work No. 3A for which the provisions of this Order have effect for the benefit of the undertaker and Harlaxton Engineering Services Limited.

(4) Paragraph (1) does not apply to Work No. 3B for which the provisions of this Order have effect for the benefit of the undertaker and Western Power Distribution Plc.

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

9.—(1) Subject to paragraph (4) the undertaker may—

- (a) transfer to another person (“the transferee”) all or any part of the benefit of the provisions of this Order (including any part of the authorised development) and such related statutory rights as may be agreed in writing between the undertaker and the transferee; or
- (b) grant to another person (“the lessee”), for a period agreed between the undertaker and the lessee, all or any part of the benefit of the provisions of this Order (including any part of the authorised development) and such related statutory rights as may be agreed between the undertaker and the lessee.

(2) Where an agreement has been made in accordance with paragraph (1)(a) or (1)(b) references in this Order to the undertaker, except paragraph (3), include references to the transferee or the lessee.

(3) The exercise by a person of any benefits or rights conferred in accordance with any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those benefits or rights were exercised by the undertaker.

(4) The consent of the Secretary of State is required for the exercise of the powers under paragraph (1) except where—

- (a) the transferee or lessee holds a licence under section 6 (licences authorising supply, etc.) of the Electricity Act 1989(15); or
- (b) the time limits for all 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 claims that have been made have all been compromised or withdrawn;
  - (iii) compensation has been paid in final settlement of any claims made;
  - (iv) payment of compensation into court in lieu of settlement of all such claims has taken place; or
  - (v) it has been determined by a tribunal or court of competent jurisdiction in respect of all claims that no compensation is payable.

(5) The Secretary of State must consult the MMO before giving consent under paragraph (1) to the transfer or grant to another person of the benefit of the provisions of the deemed marine licence.

(6) Where the consent of the Secretary of State is not required under paragraph (4), the undertaker must notify the Secretary of State in writing before transferring or granting all or any part of the benefit of the provisions of this Order and such related statutory rights referred to in paragraph (1).

(7) The notification referred to in paragraph (6) must state—

- (a) the name and contact details of the person to whom the benefit of the powers will be transferred or granted;
- (b) subject to paragraph (8), the date on which the transfer will take effect;
- (c) the powers to be transferred or granted;
- (d) pursuant to paragraph (3), the restrictions, liabilities and obligations that will apply to the person exercising the powers transferred or granted; and
- (e) where relevant, a plan showing the works or areas to which the transfer or grant relates.

(8) The date specified under paragraph (7)(b) must not be earlier than the expiry of five working days from the date of the receipt of the notice.

(9) The notice given under paragraph (6) 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.

## PART 3 STREETS

### Street works

**10.**—(1) The undertaker may, for the purposes of the authorised development, enter on so much of any of the streets specified in Schedule 3 (streets subject to street works) and may—



- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) drill, tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street, change its position or remove it; and
- (e) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b), (c) or (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) Where the undertaker is not the street authority, the provisions of sections 54 (notice of certain works) to 106 (index of defined expressions) of the 1991 Act apply to any street works carried out under paragraph (1).

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

**11.**—(1) Works constructed or maintained under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major highway works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (highway authorities, highways and related works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(16) (dual carriageways and roundabouts) of the 1980 Act or section 184(17) (vehicle crossings over footways and verges) of that Act.

(2) In Part 3 (street works in England and Wales) of the 1991 Act, in relation to works which are major highway works by virtue of paragraph (1), references to the highway authority concerned are to be construed as references to the undertaker.

(3) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- section 56(18) (power to give directions as to timing);
- section 56A(19) (power to give directions as to placing of apparatus);
- section 58(20) (restrictions on works following substantial road works);
- section 58A(21) (restriction on works following substantial street works);
- section 73A(22) (power to require undertaker to re-surface street);
- section 73B(23) (power to specify timing etc. of re-surfacing);
- section 73C(24) (materials, workmanship and standard of re-surfacing);

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(16) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

(17) Section 184 was amended by sections 35, 37, 38 and 46 of the Criminal Justice Act 1982 (c. 48); section 4 of, and paragraph 45(11) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11); and section 168 of, and paragraph 9 of Schedule 8 and Schedule 9 to, the New Roads and Street Works Act 1991.

(18) Section 56 was amended by section 43 of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(19) Section 56A was inserted by section 44 of the Traffic Management Act 2004.

(20) Section 58 was amended by section 51 of, and Schedule 1 to, the Traffic Management Act 2004.

(21) Section 58A was inserted by section 52 of the Traffic Management Act 2004.

(22) Section 73A was inserted by section 55 of the Traffic Management Act 2004.

(23) Section 73B was inserted by section 55 of the Traffic Management Act 2004.

(24) Section 73C was inserted by section 55 of the Traffic Management Act 2004.

section 78A(25) (contributions to costs of re-surfacing by undertaker); and  
 Schedule 3A(26) (restrictions on works following substantial street works).

(4) The provisions of the 1991 Act mentioned in paragraph (5) (which, together with other provisions of that Act, apply in relation to the execution of street works) and any regulations made, or code of practice issued or approved under, those provisions apply (with the necessary modifications) in relation to any alteration, diversion or restriction of use of a street of a temporary nature by the undertaker under the powers conferred by article 13 (temporary closure, alteration, diversion and restriction of use of streets), whether or not the alteration, diversion or restriction constitutes street works within the meaning of that Act.

(5) The provisions of the 1991 Act(27) referred to in paragraph (4) are—  
 section 54(28) (advance notice of certain works), subject to paragraph (6);  
 section 55(29) (notice of starting date of works), subject to paragraph (6);  
 section 57(30) (notice of emergency works);  
 section 59(31) (general duty of street authority to co-ordinate works);  
 section 60 (general duty of undertakers to co-operate);  
 section 68 (facilities to be afforded to street authority);  
 section 69 (works likely to affect other apparatus in the street);  
 section 75 (inspection fees);  
 section 76 (liability for cost of temporary traffic regulation); and  
 section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(6) Sections 54 and 55 of the 1991 Act as applied by paragraph (4) have effect as if references in section 57 of that Act to emergency works were a reference to a closure, alteration, diversion or restriction (as the case may be) required in a case of emergency.

### **Power to alter layout, etc., of streets**

**12.—**(1) The undertaker may for the purposes of the authorised development permanently or temporarily alter the layout of or carry out any works in the street specified in column (1) of Part 1 or 2 of Schedule 4 (streets subject to alteration of layout) in the manner specified in relation to that street in column (2).

(2) Without prejudice to the specific powers conferred by paragraph (1), but subject to paragraphs (3) and (4), the undertaker may, for the purposes of constructing, operating or maintaining the authorised development alter the layout of any street within the Order limits and, without limiting the scope of this paragraph, the undertaker may—

- (a) alter the level or increase the width of any kerb, footway, cycle track or verge;
- (b) make and maintain passing places.

(3) The undertaker must restore any street that has been temporarily altered under this article to the reasonable satisfaction of the street authority.

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(25) Section 78A was inserted by section 57 of the Traffic Management Act 2004.

(26) Schedule 3A was inserted by section 52(2) of, Schedule 4 to, the Traffic Management Act 2004.

(27) Sections 54, 55, 57, 60, 68 and 69 were amended by sections 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004.

(28) As also amended by section 49(1) of the Traffic Management Act 2004.

(29) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.

(30) As also amended by section 52(3) of the Traffic Management Act 2004.

(31) As amended by section 42 of the Traffic Management Act 2004.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority.

(5) If a street authority which receives an application for consent under paragraph (4) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Temporary closure, alteration, diversion and restriction of use of streets**

**13.**—(1) The undertaker may, during and for the purposes of carrying out the authorised development, temporarily close, alter, divert, prohibit the use of or restrict the use of any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without prejudice to the scope of paragraph (1), the undertaker may use any street temporarily closed, altered, diverted or restricted under the powers conferred by this article and within the Order limits as a temporary working site.

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

(4) Without prejudice to the generality of paragraph (1), the undertaker may temporarily close, alter, divert or restrict the use of the streets specified in column (1) of Schedule 5 (temporary closure, alteration, diversion and restriction of the use of streets) to the extent specified in column (2) of that Schedule.

(5) The undertaker must not temporarily close, alter, divert or restrict the use of—

- (a) any street specified in paragraph (4) without first consulting the street authority; and
- (b) any other street without the consent of the street authority, which may attach reasonable conditions to any consent but such consent must not be unreasonably withheld or delayed.

(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) Where the undertaker provides a temporary diversion under paragraph (4), the new or temporary alternative route is not required to be of a higher standard than the temporarily closed, altered, diverted or restricted street specified in Schedule 5.

(8) If a street authority which receives a valid application for consent under paragraph (5) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Permanent stopping up of streets**

**14.**—(1) Subject to the provisions of this article, the undertaker may, in connection with the construction of the authorised development, stop up the streets specified in column (1) of Schedule 6 (permanent stopping up of streets and public rights of way) to the extent specified and as described in column (2) of that Schedule.

(2) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) the undertaker may appropriate and use for the purposes of the authorised development so much of the site of the street as is bounded on both sides by land owned by the undertaker.

(3) Any person who suffers loss by the suspension or extinguishment 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.

(4) This article is subject to article 36 (apparatus and rights of statutory undertakers in stopped up streets).

### **Access to works**

**15.**—(1) The undertaker may, for the purposes of the authorised development—

- (a) form and layout the permanent means of access, or improve existing means of access in the locations specified in Part 1 of Schedule 4 (streets subject to alteration of layout);
- (b) form and layout the temporary means of access in the locations specified in Part 2 of Schedule 4 (streets subject to alteration of layout); and
- (c) with the approval of the relevant planning authority after consultation with the highway authority, form and lay out such other means of access or improve the existing means of access, at such locations within the Order limits as the undertaker reasonably requires for the purposes of the authorised development.

(2) If a relevant planning authority which receives an application for consent under paragraph (1) fails to notify the undertaker of its decision before the end of the period of 28 days beginning with the date on which the application was made, it is deemed to have granted consent.

### **Use of private roads**

**16.**—(1) The undertaker may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction or maintenance of the authorised development.

(2) The undertaker must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

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

### **Agreements with street authorities**

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

- (a) the construction of any new street including any structure carrying the street, whether or not over or under any part of the authorised development;
- (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of any street or the structure of any bridge or tunnel carrying a street over or under the authorised development;
- (d) any closure, alteration, diversion or restriction in the use of a street authorised by this Order;
- (e) the construction in the street of any of the authorised development; or
- (f) any such works as the parties may agree.

(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.

### **Traffic regulation measures**

**18.**—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, the undertaker may, in so far as may be expedient or necessary for the purposes of, in connection with, or in consequence of the construction, maintenance and operation of the authorised development—

- (a) permit, prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles on any road; and
- (b) make provision as to the direction or priority of vehicular traffic on any road,

either at all times or at times, on days or during such periods as may be specified by the undertaker.

(2) The undertaker must not exercise the powers under paragraph (1) of this article unless it has—

- (a) given not less than four weeks' notice in writing of its intention so to do to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within seven days of its receipt of notice of the undertaker's intention in the case of sub-paragraph (a).

(3) Any prohibition, restriction or other provision made by the undertaker under article 13 (temporary closure, alteration, diversion and restriction of use of streets) or paragraph (1) of this article has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated as an order under section 32 (power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected is deemed to be a traffic order for the purposes of Schedule 7(32) (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004.

(4) In this article—

- (a) subject to sub-paragraph (b), expressions used in this article and in the 1984 Act have the same meaning; and
- (b) a "road" means a road that is a public highway maintained by and at the expense of the traffic authority.

## PART 4

### SUPPLEMENTARY POWERS

#### Powers in relation to relevant navigations or watercourses

**19.**—(1) Subject to Schedule 8 (protective provisions), the undertaker may, for the purpose of or in connection with the carrying out and maintenance of the authorised development, regardless of any interference with any public or private rights—

- (a) temporarily alter, interfere with, occupy and use the banks, bed, foreshores, waters and walls of a relevant navigation or watercourse;
- (b) remove or relocate any moorings so far as may be reasonably necessary for the purposes of carrying out and of maintaining the authorised development;
- (c) temporarily moor or anchor vessels and structures;
- (d) construct, place, maintain and remove temporary works and structures within the banks, bed, foreshores, waters and walls of a relevant navigation or watercourse; and
- (e) interfere with the navigation of the relevant navigation or watercourse,

in such manner and to such extent as may appear to it to be necessary or convenient.

(2) Except in the case of emergency, the undertaker must use reasonable endeavours to notify the owner of any mooring affected by the proposal to exercise the powers conferred by paragraph (1) (b) before the exercise of those powers.

(3) The undertaker must pay compensation to any person entitled to compensation under the 1961 Act who suffers any loss or damage from the exercise of the powers conferred by paragraph (1)(b).

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

(5) In this article “relevant navigation” means the part of the River Witham, known as The Haven.

#### Discharge of water

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

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by the undertaker pursuant to paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(33).

(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, whose consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld or delayed.

(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 approval must not be unreasonably withheld or delayed; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

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(33) 1991 c. 56. Section 106 was amended by sections 43(2) and 35(8)(a) and paragraph 1 of Schedule 2 to the Competition and Service (Utilities) Act 1992 (c. 43) and sections 99(2), (4), (5)(a), (5)(b),(5)(c) and 36(2) of the Water Act 2003 (c. 37) and section 32, Schedule 3, paragraph 16(1) of the Flood and Water Management Act 2010 (c. 29).

(5) 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.

(6) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b)(34) of the Environmental Permitting (England and Wales) Regulations 2016.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to Homes England, the Environment Agency, a harbour authority within the meaning of section 57 (interpretation) of the Harbours Act 1964(35), an internal drainage board, a joint planning board, a local authority, a National Park Authority, a sewerage undertaker or an urban development corporation; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(36) have the same meaning as in that Act.

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

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

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

- (a) survey or investigate the land (including any watercourses, groundwater, static water bodies or vegetation on the land);
- (b) without limitation to the scope of sub-paragraph (a), make any excavations, trial holes, boreholes and other investigations in such positions on the land as the undertaker thinks fit to investigate the extent or the nature of the surface layer, subsoil, ground water, underground structures, foundations, and plant or apparatus and remove soil and water samples and discharge water from sampling operations on to the land;
- (c) without limitation to the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land, including making any excavations or trial holes on the land for such purposes; and
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes and boreholes.

(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, such notice must indicate the nature of the survey or investigation that the undertaker intends to carry out.

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

- (a) must, if so required before or after entering the land, produce written evidence of their authority to do so; and
- (b) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) No trial holes are to be made under this article—

- (a) in land located within the highway boundary without the consent of the highway authority; or

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(34) S.I. 2016/1154.

(35) 1964 c. 40.

(36) 1991 c. 57.

(b) in a private street without the consent of the street authority, but such consent must not be unreasonably withheld or delayed.

(5) The undertaker must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the authority conferred by this article, such compensation to be determined, in case of dispute, under Part 1(37) (determination of questions of disputed compensation) of the 1961 Act.

(6) If either a highway authority or 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 will be deemed to have granted consent.

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

### **Protective work to buildings**

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

(2) Protective works may be carried out—

- (a) at any time before or during the construction of any part of the authorised development in the vicinity of the building or structure; or
- (b) after the completion of that part of the authorised development in the vicinity of the building or structure at any time up to the end of the period of 5 years beginning with the date of final commissioning.

(3) For the purpose of determining how the powers under this article are to be exercised the undertaker may enter and survey any building or structure falling within paragraph (1) and any land within its curtilage and place on, leave on and remove from the land and building any apparatus and equipment for use in connection with the survey.

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

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

and if it is reasonably required, the undertaker may take possession, or exclusive possession, of the building and any land or part thereof for the purpose of carrying out the protective works.

(5) Before exercising—

- (a) a power under paragraph (1) to carry out protective works under this article to a building or structure;
- (b) a power under paragraph (3) to enter a building or structure and land within its curtilage;

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(37) The functions of the Lands Tribunal under the 1961 Act are transferred to the Upper Tribunal under the Tribunals, Courts and Enforcement Act 2007 (c. 15).



(c) a power under paragraph (4)(a) to enter a building or structure and land within its curtilage;  
or

(d) a power under paragraph (4)(b) to enter and take possession of land,

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

(6) Where a notice is served under paragraph (5)(a), 5(b), (5)(c) or (5)(d), the owner or occupier of the building, structure or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question of whether it is necessary or expedient to carry out the protective works or to enter the building, structure or land to be referred to arbitration under article 49 (arbitration).

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

(8) Where—

(a) protective works are carried out to a building or structure under this article; and

(b) within 5 years beginning with the date of final commissioning for that part of the authorised development in the vicinity of the building or structure it appears that the protective works are inadequate to protect the building or structure against damage caused by the construction, on operation or maintenance of that part of the authorised development,

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

(9) Nothing in this article relieves the undertaker from any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act.

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

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

(a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building or structure by the construction, operation or maintenance of the authorised development; and

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

(c) any works the purpose of which is to secure the safe operation of the authorised development or to prevent or minimise the risk of such operation being disrupted.

(12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the entry onto, or possession of land under this article, to the same extent as it applies to the compulsory acquisition of land under this order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

### **Felling or lopping of trees**

**23.—**(1) The undertaker may fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the authorised development or any apparatus used in connection with the authorised development; or

- (b) from constituting a danger to persons using the authorised development; or
- (c) from obstructing or interfering with the passage of construction vehicles to the extent necessary for the purposes of construction of the authorised development.

(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, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

### **Removal of human remains**

**24.**—(1) In this article “the specified land” means the land within the Order limits.

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

(3) Subject to paragraph (14), before any such remains are removed from the specified land the undertaker must give notice of the intended removal, describing the specified land and stating the general effect of the following provisions of this article, by—

- (a) publishing a notice once in each of two successive weeks in a newspaper circulating in the relevant area of the authorised project; and
- (b) displaying a notice in a conspicuous place on or near to the specified land.

(4) As soon as reasonably practicable after the first publication of a notice under paragraph (3) the undertaker must send a copy of the notice to the local authority.

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

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

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

and that person must, as soon as reasonably practicable after such re-interment or cremation, provide to the undertaker a certificate for the purpose of enabling compliance with paragraph (11).

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

(8) If the undertaker is not satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be, or that the remains in question can be identified, the question is to be determined on the application of either party in a summary manner by the county court, and the court may make an order specifying who must remove the remains and as to the payment of the costs of the application.

(9) If—

- (a) within the period of 56 days referred to in paragraph (5) no notice under that paragraph has been given to the undertaker in respect of any remains in the specified land; or

- (b) such notice is given and no application is made under paragraph (8) within 56 days after the giving of the notice but the person who gave the notice fails to remove the remains within a further period of 56 days; or
- (c) within 56 days after any order is made by the county court under paragraph (8) any person, other than the undertaker, specified in the order fails to remove the remains; or
- (d) it is determined that the remains to which any such notice relates cannot be identified,

subject to paragraph (10) the undertaker must remove the remains and cause them to be re-interred in such burial ground or cemetery in which burials may legally take place as the undertaker thinks suitable for the purpose; and, so far as possible, remains from individual graves must be reinterred in individual containers which must be identifiable by a record prepared with reference to the original position of burial of the remains that they contain.

(10) If the undertaker is satisfied that any person giving notice under paragraph (5) is the personal representative or relative as that person claims to be and that the remains in question can be identified, but that person does not remove the remains in accordance with the terms of this article, the undertaker must comply with any reasonable request that person may make in relation to the removal and re-interment or cremation of the remains.

(11) On the re-interment or cremation of any remains under this article—

- (a) a certificate of re-interment or cremation is to be sent by the undertaker to the Registrar General by the undertaker giving the date of re-interment or cremation and identifying the place from which the remains were removed and the place in which they were re-interred or cremated; and
- (b) a copy of the certificate of re-interment or cremation and the record mentioned in paragraph (9) is to be sent by the undertaker to the local authority mentioned in paragraph (4).

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

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

(14) No notice is required under paragraph (3) before the removal of any human remains where the undertaker is satisfied—

- (a) that the remains were interred more than 100 years ago; and
- (b) that no relative or personal representative of the deceased is likely to object to the remains being removed in accordance with this article.

(15) In the case of remains in relation to which paragraph (14) applies, the undertaker—

- (a) may remove the remains; and
- (b) must apply for direction from the Secretary of State under paragraph (12) as to their subsequent treatment.

(16) In this article—

- (a) references to a relative of the deceased are to a person who is a—
  - (i) husband, wife, civil partner, parent, grandparent, child or grandchild of the deceased; or
  - (ii) child of a brother, sister, uncle or aunt of the deceased;
- (b) references to a personal representative of the deceased are to a person or persons who is the lawful executor of the estate of the deceased or is the lawful administrator of the estate of the deceased.

## PART 5

### POWERS OF ACQUISITION AND POSSESSION OF LAND

#### Compulsory acquisition of land

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

(2) This article is subject to article 27 (time limit for exercise of authority to acquire land compulsorily) and paragraph (9) of article 33 (temporary use of land for carrying out the authorised development).

#### Compulsory acquisition of land – incorporation of the mineral code

**26.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(**38**) is incorporated in this Order subject to the modification that for “the acquiring authority” substitute “the undertaker”.

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

**27.**—(1) After the end of the period of five years beginning on the day on which this Order comes into force—

- (a) no notice to treat may be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act; and
- (b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 30 (application of the 1981 Act).

(2) The authority conferred by article 33 (temporary use of land for carrying out the authorised development) must cease at the end of the period referred to in paragraph (1), save 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.

#### Private rights

**28.**—(1) Subject to the provisions of this article, all private rights and restrictive covenants over land subject to compulsory acquisition under this Order are extinguished—

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

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(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 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 the imposition of a restrictive covenant under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

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(38) 1981 c. 67.

(5) This article does not apply in relation to any right or apparatus to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 35 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition or creation of rights over land or the imposition of restrictive covenants over or affecting the land;

(ii) the undertaker's appropriation of it;

(iii) the undertaker's entry onto it; or

(iv) the undertaker's taking temporary possession of it,

that any or all of those paragraphs do not apply to any right specified in the notice; and

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

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

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

(8) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support; and include restrictions as to the use of land arising by virtue of a contract, agreement or undertaking having that effect.

### **Power to override easements and other rights**

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

(a) an interference with an interest or right to which this article applies; or

(b) a breach of a restriction as to the user of land arising by virtue of a contract.

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

(a) the erection, construction or maintenance of any part of the authorised development;

(b) the exercise of any power authorised by this Order; or

(c) the use of any land within the Order limits (including the temporary use of land).

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

(4) Subject to article 51 (no double recovery), where an interest, right or restriction is overridden by paragraph (1), unless otherwise agreed, compensation—

(a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

(b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—

- (i) the compensation is to be estimated in connection with a purchase under that Act; or
- (ii) the injury arises from the execution of works on or use of land acquired under that Act.

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

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

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

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

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

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

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

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

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

(5) Omit section 5A(**39**) (time limit for general vesting declaration).

(6) In section 5B(**40**) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the five year period mentioned in article 27 (time limit for exercise of authority to acquire land compulsorily) of the Boston Alternative Energy Facility Order 2023”.

(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(**41**) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 32 (acquisition of subsoil or air-space only) of the Boston Alternative Energy Facility Order 2023, which excludes the acquisition of subsoil only from this Schedule.”

(10) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 31 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

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(39) Inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

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

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

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

**31.**—(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)(**42**) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 27 (time limit for exercise of authority to acquire land compulsorily) of the Boston Alternative Energy Facility Order 2023”.

(3) In section 11A(**43**) (powers of entry: further notices of entry)—

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

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 27 (time limit for exercise of authority to acquire land compulsorily) of the Boston Alternative Energy Facility Order 2023”.

(5) In Schedule 2A(**44**) (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 32(3) (acquisition of subsoil or air-space only) of the Boston Alternative Energy Facility Order 2023, which excludes the acquisition of subsoil only from this Schedule.”; and

(b) after paragraph 29 insert—

## **“PART 4**

### **INTERPRETATION**

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 22 (protective work to buildings) or article 33 (temporary use of land for carrying out the authorised development) or article 34 (temporary use of land for maintaining the authorised development) of the Boston Alternative Energy Facility Order 2023.”.

### **Acquisition of subsoil or air-space only**

**32.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of or air-space over the land referred to in paragraph (1) of article 25 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or air-space 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 only—

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

(43) Inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(44) Inserted by Schedule 17(1) paragraph 3 to the Housing and Planning Act 2016 (c. 22).

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
  - (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
  - (c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.
- (4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory.

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

**33.—**(1) The undertaker may, in connection with the construction of the authorised development—

- (a) enter on and take temporary possession of—
  - (i) the land specified in column (1) of the table in Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of the table in that Schedule;
  - (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 and no declaration has been made under section 4 (execution of declaration) of the 1981 Act (other than a notice of entry or a declaration in connection with the acquisition of rights and/or the imposition of restrictive covenants only);
- (b) remove any buildings, apparatus, fences, landscaping, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and
- (d) construct any works on that land as are mentioned in Schedule 1 (authorised development).

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

(3) The undertaker is not required to serve notice under paragraph (2) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

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

- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of one year beginning with the date of final commissioning of the authorised development; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of final commissioning of the authorised development unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the land subject to temporary possession.

(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 unless otherwise agreed but the undertaker is not required to—



- (a) replace a building removed under this article;
  - (b) restore the land on which any permanent works have been constructed under paragraph (1) (d);
  - (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
  - (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.
- (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 compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.
- (8) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (5) does not prevent the undertaker giving up possession of the land.
- (9) Subject to article 51 (no double recovery) nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).
- (10) 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 acquiring any part of the subsoil of or airspace over (or rights in the subsoil of or airspace over) under article 32 (acquisition of subsoil or air-space only).
- (11) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire the land or any interest in it.
- (12) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.
- (13) Nothing in this article prevents the taking of temporary possession more than once in relation to any land under paragraph (1).

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

- 34.—**(1) Subject to paragraph (2), at any time during the maintenance period (as defined in paragraph (11)) relating to any part of the authorised development, the undertaker may—
- (a) enter on and take temporary possession of any land within the Order land if possession is reasonably required for the purpose of maintaining the authorised development;
  - (b) enter on any land within the Order land for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
  - (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.
- (2) Paragraph (1) does not authorise the undertaker to take temporary possession of—
- (a) any house or garden belonging to a house; or
  - (b) any building (other than a house) if it is for the time being occupied.

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

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such period of notice as is reasonably practical in the circumstances.

(5) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

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

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

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (7).

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

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

(12) In this article “the maintenance period” means the period of 5 years beginning with the date of final commissioning.

### **Statutory undertakers**

**35.—**(1) Subject to the provisions of Schedule 8 (protective provisions), the undertaker may—

- (a) exercise the powers conferred by article 25 (compulsory acquisition of land) in relation to so much of the Order land belonging to statutory undertakers;
- (b) extinguish or suspend the rights of or restrictive covenants for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which article 36 (apparatus and rights of statutory undertakers in stopped up streets) of this Order applies.

### **Apparatus and rights of statutory undertakers in stopped up streets**

36.—(1) Where a street is stopped up under article 14 (permanent stopping up of streets), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 13 (temporary closure, alteration, diversion and restriction of use of streets) any statutory utility whose apparatus is under, in, on over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under paragraph (2)—

- (a) apparatus of a better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“relocation works” means work executed, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in this section 151(1) (interpretation) of the Communications Act 2003(45).

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

**37.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 35 (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 35 (statutory undertakers) any person who is—

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

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

(3) This article does not have effect in relation to apparatus to which article 36 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(46); and

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

### **Disregard of certain improvements, etc.**

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

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

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(45) 2003 c. 21.

(46) 2003 c. 21.

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

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

#### **Set-off for enhancement in value of retained land**

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

(2) The 1961 Act has effect, subject to paragraph (1) as if this Order were a local enactment for the purposes of that Act.

## **PART 6**

### **MISCELLANEOUS AND GENERAL**

#### **Disapplication of legislative provisions, etc.**

**40.**—(1) The following provisions do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction, operation or maintenance of the authorised development—

- (a) sections 23 (prohibition of obstructions, etc. in watercourses), 30 (authorisation of drainage works in connection with a ditch) and 32 (variation of awards) of the Land Drainage Act 1991<sup>(47)</sup>;
- (b) the provisions of any byelaws made under section 66 (powers to make byelaws) of the Land Drainage Act 1991;
- (c) the provisions of any byelaws made under, or having effect as if made under, paragraphs 5, 6 or 6A of Schedule 25 (byelaw making powers of the appropriate agency) to the Water Resources Act 1991<sup>(48)</sup>; and
- (d) regulation 12 (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016<sup>(49)</sup> in respect of a flood risk activity only.

(2) The provisions of the Neighbourhood Planning Act 2017<sup>(50)</sup>, insofar as they relate to temporary possession of land under this Order, do not apply in relation to the construction of any work or the carrying out of any operation required for the purpose of, or in connection with, the construction of the authorised development and, within the maintenance period defined in article

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<sup>(47)</sup> 1991 c. 59.

<sup>(48)</sup> 1991 c. 57. Paragraph 5 was amended by section 100(1) and (2) of the Natural Environment and Rural Communities Act 2006 (c. 16), section 84 of, and paragraph 3 of Schedule 11 to, the 2009 Act (c. 23), paragraphs 40 and 49 of Schedule 25 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755. Paragraph 6 was amended by paragraph 26 of Schedule 15 to the Environment Act 1995 (c. 25), section 224 of, and paragraphs 20 and 24 of Schedule 16, and Part 5(B) of Schedule 22, to, the 2009 Act and S.I. 2013/755. Paragraph 6A was inserted by section 103(3) of the Environment Act 1995.

<sup>(49)</sup> S.I. 2016/1154.

<sup>(50)</sup> 2017 c. 20.

34(12) (temporary use of land for maintaining the authorised development) of this Order, any maintenance of any part of the authorised development.

(3) Section 25 of the Burial Act 1857<sup>(51)</sup> (bodies not to be removed from burial grounds, save under faculty, without licence of Secretary of State) does not apply to a removal carried out in accordance with article 24 (removal of human remains) of this Order.

(4) Despite the provisions of section 208 (liability) of the 2008 Act, for the purposes of regulation 6 of the Community Infrastructure Levy Regulations 2010<sup>(52)</sup> any building comprised in the authorised development is deemed to be—

- (a) a building into which people do not normally go; or
- (b) a building into which people go only intermittently for the purpose of inspecting or maintaining fixed plant or machinery.

### **Amendment of local legislation**

**41.**—(1) The following local enactments and local byelaws, and any byelaws or other provisions made under any of those enactments or byelaws, are hereby excluded and do not apply insofar as inconsistent with a provision, of or a power conferred by, this Order—

- (a) Boston Port and Harbour Act 1812<sup>(53)</sup>;
- (b) Witham Navigation and Drainage Act 1812<sup>(54)</sup>;
- (c) River Witham Outfall Improvement Act 1880<sup>(55)</sup>;
- (d) Boston Dock Act 1881<sup>(56)</sup>;
- (e) Land Drainage (Black Sluice) Provisional Order Confirmation Act 1925<sup>(57)</sup>;
- (f) The Boston Barrier Order 2017<sup>(58)</sup>;
- (g) Boston Dock Byelaws 1947; and
- (h) Black Sluice Internal Drainage Board Complete Land Drainage Byelaws 1988.

(2) For the purpose of paragraph (1) a provision is inconsistent with the exercise of a power conferred by this Order if and insofar as (in particular)—

- (a) it would make it an offence to take action, or not to take action, in pursuance of a power conferred by this Order;
- (b) action taken in pursuance of a power conferred by this Order would cause the provision to apply so as to enable a person to require the taking of remedial or other action or so as to enable remedial or other action to be taken; or
- (c) action taken in pursuance of a power or duty under the provisions would or might interfere with the exercise of any work authorised by this Order.

(3) Where any person notifies the undertaker in writing that anything done or proposed to be done by the undertaker or by virtue of this Order would amount to a contravention of a statutory provision of local application, the undertaker must as soon as reasonably practicable, and at any rate within 14 days of receipt of the notice, respond in writing setting out—

- (a) whether the undertaker agrees that the action taken or proposed does or would contravene the provision of local application;

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<sup>(51)</sup> 1857 c. 81.

<sup>(52)</sup> S.I. 2010/948, amended by S.I. 2011/987; there are other amending instruments but none are relevant to this Order.

<sup>(53)</sup> 1812. c. cv.

<sup>(54)</sup> 1812 c. cviii.

<sup>(55)</sup> 1880 c. cliii.

<sup>(56)</sup> 1881 c. cxii.

<sup>(57)</sup> 1925 c. lxxi.

<sup>(58)</sup> S.I. 2017/1329.

- (b) if the undertaker does agree, the grounds (if any) on which the undertaker believes that the provision is excluded by this article; and
- (c) the extent of that exclusion.

### **Planning permission, etc.**

**42.**—(1) If planning permission is granted under the powers conferred by the 1990 Act for development any part of which is within the Order limits following the coming into force of this Order that is—

- (a) not itself a nationally significant infrastructure project under the 2008 Act or part of such a project; or
- (b) required to complete or enable the use or operation of any part of the development authorised by this Order,

then the construction, maintenance, use or operation of that development under the terms of the planning permission does not constitute a breach of the terms of this Order.

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

(3) Development consent granted by this Order is to be treated as planning permission in accordance with Part 3 (control over development) of the 1990 Act for the purposes of regulation 14 of the Town and Country Planning (Tree Preservation) (England) Regulations 2012<sup>(59)</sup> and the Forestry Act 1967<sup>(60)</sup>.

### **Application of landlord and tenant law**

**43.**—(1) This article applies to—

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

so far as any such agreement relates to the terms on which any land 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 prejudices the operation of any agreement to which this article applies.

(3) No enactment or rule of law to which paragraph (2) applies is to apply in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

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

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<sup>(59)</sup> S.I. 2012/605.

<sup>(60)</sup> 1967 c. 10.

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

**44.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by persons aggrieved by statutory nuisances) of the Environmental Protection Act 1990<sup>(61)</sup> in relation to a nuisance falling within paragraphs (c), (d), (e), (fb), (g) or (h) of section 79(1) (statutory nuisances and inspections therefor) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if—

- (a) the defendant shows that the nuisance—
  - (i) relates to premises used by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development and that the nuisance is attributable to the construction of the authorised development in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61 (prior consent for work on construction sites), of the Control of Pollution Act 1974<sup>(62)</sup>; or
  - (ii) is a consequence of the construction or maintenance of the authorised development and that it cannot reasonably be avoided; or
- (b) the defendant shows that the nuisance is a consequence of the use of the authorised development and that it cannot reasonably be avoided.

(2) For the purposes of paragraph (1), compliance with the controls and measures described in the Code of Construction Practice approved under paragraph 11 of Schedule 2 to this Order will be sufficient, but not necessary, to show that an alleged nuisance could not reasonably be avoided.

(3) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by the undertaker for the purposes of or in connection with the construction or maintenance of the authorised development.

### **Protective provisions**

**45.** Schedule 8 (protective provisions) to the Order has effect.

### **Deemed marine licence**

**46.** The marine licence set out in Schedule 9 (deemed marine licence) is deemed to have been issued under Part 4 of the Marine and Coastal Access Act 2009 for the licensed activities set out in Part 2, and subject to the licence conditions set out in Parts 3 and 4, of that licence.

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

**47.**—(1) The undertaker must, as soon as practicable after the making of this Order, submit to the Secretary of State copies of all documents and plans referred to in Schedule 10 (documents and plans to be certified) to this Order for certification that they are true copies of those documents.

(2) Where any plan or document set out in Schedule 10 requires to be amended to reflect the terms of the Secretary of State's decision to make the Order, that plan or document in the form amended to the Secretary of State's satisfaction is the version of the plan or document required to be certified under paragraph (1).

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

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<sup>(61)</sup> 1990 c. 43. Section 82 was amended by section 103 of the Clean Neighbourhoods and Environment Act 2005 (c. 16); section 79 was amended by sections 101 and 102 of the same Act. There are other amendments not relevant to this Order.

<sup>(62)</sup> 1974 c. 40.



## Service of notices

**48.**—(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 service by post) of the Interpretation Act 1978<sup>(63)</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 that 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 an 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 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 the 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 is to 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) 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 seven days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of an electronic transmission 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 is final and takes effect on a date specified by the person in the notice but that date must not be less than seven days after the date on which the notice is given.

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<sup>(63)</sup> 1978 c. 30.

(9) This article does not 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.

### **Arbitration**

**49.**—(1) Except where otherwise expressly provided for in this Order and unless otherwise agreed in writing between the parties, any difference under any provision of this Order (other than a difference which falls to be determined by the tribunal) must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

(2) For the avoidance of doubt, any matter for which the consent or approval of the Secretary of State or the MMO is required under any provision of this Order will not be subject to arbitration.

### **Procedures in relation to approvals, etc., under Schedule 2**

**50.**—(1) Where an application or request is submitted to the relevant planning authority, a highway authority, a street authority or the owner of a watercourse, sewer or drain for any consent, agreement or approval required or contemplated by any other the provisions of the Order such consent, agreement or approval, if given, must be given in writing, such agreement not to be unreasonably withheld.

(2) Part 2 of Schedule 2 (procedure for discharge of requirements) has effect in relation to all consents, agreements or approvals granted, refused or withheld in relation to the requirements set out in Part 1 of Schedule 2, and any document referred to in any requirement in that Part 1.

(3) The procedure set out in Part 2 of Schedule 2 has effect in relation to any other consent, agreement or approval required under this Order where such consent, agreement or approval is granted subject to any condition to which the undertaker objects or is refused or is withheld.

### **No double recovery**

**51.** Compensation will not be payable in respect of the same matter both under this Order and under any enactment, any contract or any rule of law.

### **Guarantees in respect of payment of compensation**

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

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

(2) The provisions are—

- (a) article 25 (compulsory acquisition of land);
- (b) article 28 (private rights);
- (c) article 33 (temporary use of land for carrying out the authorised development);

- (d) article 34 (temporary use of land for maintaining the authorised development); and
- (e) article 35 (statutory undertakers).

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

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

### **Crown rights**

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

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in section 227 of the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

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

### **Offshore ornithology compensation provisions**

**54.** Schedule 11 (ornithology compensation measures) to the Order has effect.

### **Harbour seal compensation measures**

**55.** Schedule 12 (harbour seal compensation measures) to the Order has effect.

Signed by the authority of the Secretary of State for Department for Energy Security and Net Zero

5th July 2023

*David Wagstaff*  
Deputy Director, Energy Infrastructure Planning  
Department for Energy Security and Net Zero