PLANNING ACT 2008

APPLICATION BY MONA OFFSHORE WIND LIMITED FOR AN ORDER GRANTING DEVELOPMENT CONSENT FOR THE MONA OFFSHORE WIND PROJECT

LAND TO THE EAST OF THE A548

COMPRISING

PLOTS 06/102 - 06/105 (INCLUSIVE)

PLANNING INSPECTORATE REFERENCE NUMBER EN010137

MNOW-AFP079: MNOW-AFP129: MNOW-AFP130: MNOW-AFP131

HEARING POINTS WRITTEN SUMMARY

OF

GRIFFITH W. PARRY MRICS

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Contents

1.0 Definition /Glossary

1.1 This document uses the same definitions as in the previous Written Submissions. These are as follows:

- Mona Offshore Wind Limited **("Promoter")**
- Planning Act 2008 (the "**Act**")
- Development Consent Order ("**Order**")
- Mona Offshore Windfarm ("**Scheme**").
- Plots 06-102 to 06-105 inclusive ("**Plots**")
- Mrs HM Parry, Mrs EW Wade, Mr RW Parry and Mr GW Parry("**Objectors**").
- The Plots and other surrounding land owned by the Objectors ("**Property**")
- Nationally Significant Project ("**NSP**").
- Preliminary Environmental Information Report ("**PEIR"**)
- The Gas and Electricity Markets Authority grants ("**GEMA**")
- Distribution Network Operators (**"DNOs"**)
- Scottish Power Electricity Networks ("**SPEN**").
- Document Reference S_D1_5.6 Document No. MOCNS-J3303-RPS-10277 entitled Appendix to Response to Hearing Action Point: Indicative onshore cable corridor crossing section and trenchless technique crossing long-section ("**Hearing Action Point Submission**")
- Written Submissions of Griffith Parry dated August 7th ("**August 7th Submissions**")
- Drawing number ED13798-GE-1015 Rev F ("**Drawing**")
- Health and Safety Executive ("**HSE**")
- Written Representations ("**WR**")
- Point of Interconnection ("**POI"**)
- Compulsory Purchase Act 1965 ("**CPA1965**")
- Supplementary Written Submissions of Griffith Parry dated August 27th ("**August 27th Supplementary Submissions**")
- Further Supplementary Written Submissions dated 30th September ("**September 30th Rebuttal"**)
- Expert Working/ Steering Group ("**EWG**")

2.0 Introduction

2.1 The Objectors have made written submissions to this examination and intend to try and summarise the key issues here for the Compulsory Purchase Hearing.

2.2 The Objectors have a neutral view on, and do not explicitly or implicitly wish to interfere with the confirmation of this Order beyond its impact on themselves and their land unless that is the only way that Robert Parry can continue to be able to implement his scheme.

2.3 The impact of the Scheme on the Objectors plans for the land can be seen in the drawing below with the Limits of Deviation overlaid:

2.4 The Panel is respectfully invited to recommend the exclusion of plots 06-102 to 06-105 from the Order for the reasons to be outlined as follows.

2.5 If the Panel cannot agree to recommend the exclusion of plots 06-102 to 06-105 in their entirety then the Panel is respectfully invited to recommend modification of the Promoter's application for the powers in order to mitigate the impact of the Mona Scheme on the Objector's proposals for the land.

3.0 <u>The reasons for excluding the Plots altogether</u>

3.1 Whether the Promoter has considered all reasonable alternatives

3.1.1 The Promoter has not considered Reasonable Alternatives as required. This is discussed at Sections 9.2.1, 10, 10.2 to 10.3 of the August 7th Submissions and further

at REP1-083.2 and 15 and 21 and 24 and 26 and Appendix 01 of the September 30th Rebuttal.

3.1.2 The advanced development of the project including on shore route corridors is evident in the minutes of the Expert Working Group ("**EWG**") Meeting No.2 dated 13/12/21 :

MINUTES OF MEETING

Security Classification: Project Internal

EnBW Partners in UK offshore wind | bp

MOM Number	:	20211213_Morgan and Mona EP_EP Steering Group	**REV. No.** : F01
MOM Subject	:	Morgan and Mona Evidence Plan Steering Group Meeting 2 - Session 1	

MINUTES OF MEETING

MEETING DATE	:	13/12/2021
MEETING LOCATION	:	Microsoft Teams
RECORDED BY	:	[redacted] (RPS)
ISSUED BY	:	[redacted] (RPS) / [redacted] (RPS)

PERSONS PRESENT:

- [redacted] – bp (LH)
- [redacted] – bp (MP)
- [redacted] – bp (WD)
- [redacted] – Wood (LG)
- [redacted] - RPS (CR)
- [redacted] – RPS (NS)
- [redacted] – RPS (KL)
- [redacted] - RPS (ST)
- [redacted] – Natural England (MK)
- [redacted] – Natural England (AuB)
- [redacted] – Natural England (EH)
- [redacted] – MMO (JS)
- [redacted] – MMO (SJ)
- [redacted] – JNCC (JW)
- [redacted] - Planning Inspectorate (GB)
- [redacted] – Planning Inspectorate (HT)
- [redacted] – Environment Agency (LL)

ITEM NO:	DISCUSSION ITEM:	Responsible party	Date

"2. Overview of Projects (presented by MP)

……. "

	Applicant plans to retain the original remit of the EP and for other topics use road maps where applicable. **Cable Routing Study Introduction** (Presented by KL) When the Projects reach scoping submission, the intention is that they will each have a single grid connection and therefore only one POI for Morgan and one for Mona. At the moment there are six POIs,four for Mona and two for Morgan. There are a number of route corridors being developed for each POI, within each scoping search area. At this time, the Applicant is not asking for detailed feedback on the indicative routes as there are many indicative routes, most of which		

<Document Number Goes Here> Page 4 of 9 Rev: ANN

<Meeting Title Goes Here>

	will fall away once there is a decision on the POIs by National Grid. The purpose of this meeting is to introduce the cable routing study, to illustrate the search areas and indicative routes and request high level feedback on any particularly sensitive receptors and the approach to the cable route study. We are not requesting detailed feedback on the routes at this time.		
3.	**Cable Routing Study** (presented by LG) The cable routing study is a technical GIS data driven study. The study looked at the six POIs and considered a number of options for each POI. The aim was to find technically feasible and the least		

(emphasis added)

This demonstrates how "*alternatives*" were developed for all 4 potential MONA POIs rather than just Bodelwyddan.

Item no.4

"4. Site Selection Process

4.	**Site selection process** (presented by LG) The Applicant started the cable route selection study with very wide search areas. Constraints were categorised as hard or soft constraints. Hard constraints were no-go areas e.g. offshore platforms, aggregate areas and urban areas. The constraints were all mapped to exclude hard constraints and to understand the distribution of soft constraints. This was used to find the cable routes of least constraint. Landfall and substation location options were investigated by sending people out to these locations and taking detailed notes e.g. the state of the coastal defences, any other developments that are not visible from satellite imagery etc. The constraints were weighted to give a greater weighting to the constraints that have a greater bearing on the decision making process. Spatial mapping was used to interrogate the constraints e.g. to measure the length of a cable route through specific constraints. This enabled one route to be compared against another and each route was scored against each constraint. This gives each route option a ranking on how it compares against the other options therefore allowing identification of the preferred route. Reasonable alternatives have also been presented as we are looking for very early feedback and will be looking for more detailed feedback when the POI for each project is known. It will be possible to go back to the mapping stages of the selection study following stakeholder feedback.		

(emphasis added)

These alternatives were developed to the extent that the Promoter's *"preferred route"*(s) for each possible POI were already selected and merely awaiting National Grid selecting the POI.

Item no.5

"5.*Identified Constraints* "

5.	**Identified constraints** (presented by LG) Each POI has several landfall options, except Bodelwyddan, which has only one landfall option. There are SPAs around the entire North Wales and English coast in this area therefore it has been impossible to completely avoid them. The Flyde MCZ blocks the coast in front of the Penwortham POI therefore the shortest route through the MCZ has been used. However, a detailed look at the distribution of the designated benthic habitats within the MCZ will be done of the POI chosen by NG and this may identify a different route as being the one least constrained. The Connah's Quay route goes through the narrowest point of the Dee Estuary SAC. In some places, there are multiple designations for the same habitats, however these have been considered separately		

(emphasis added)

3.1.3 Although the Promoter continued to "*consult*" on several points of landfall, for the Bodelwyddan POI option it already knew that Llanddulas East landfall was the only possible option.

3.1.4 Llanddulas East landfall gave rise to cable route Llanddulas East A and 65% linearly identical Llanddulas East B and Llanddulas East C. The latter having already been eliminated as the EWG Steering Group of 13/12/2021 described, that "*preferred routes*" had already been selected. The PEIR report confirms that C was eliminated due to ecological, ancient woodland, and presence of key strategic development sites.

3.1.5 The minutes of EWG Meeting No.3 dated 20/07/2022 show when National Grid made the POI decision known to the Promoter:

MINUTES OF MEETING

Security Classification: Project Internal

EnBW bp

Partners in UK offshore wind

MOM Number	: 20220720_Morgan and Mona SG	**REV. No.**	: F02
MOM Subject	: Morgan and Mona Evidence Plan Steering Group meeting 3.		

MINUTES OF MEETING

MEETING DATE	:	20/07/2022
MEETING LOCATION	:	Microsoft Teams
RECORDED BY	:	[redacted] (RPS)
ISSUED BY	:	[redacted] (RPS)

PERSONS PRESENT:

- [redacted] – bp (GV)
- [redacted] – bp (MP)
- [redacted] – bp (WD)
- [redacted] – RPS (KL)
- [redacted]
- [redacted] – Natural England (AuB)
- [redacted] - Natural England (LB)
- [redacted] - Natural England (MK)
- [redacted] – JNCC (JW)
- [redacted] – NRW (LR)
- [redacted] - Planning Inspectorate (GB)
- [redacted] - Planning Inspectorate (HT)
- [redacted] - MMO (JS)
- [redacted] - MMO (DN)

APOLOGIES:

ITEM NO:	DISCUSSION ITEM:	Responsible party	Date
1.	**Project update (presented by WD)**		
2.	**Offshore Cable Corridor route selection (presented by GV)** This is a high-level overview. Detailed information on the site selection process will be presented within the site selection and consideration of alternatives chapter of the PEIR. Due to the Offshore Transmission Network Review (OTNR), National Grid (NG) could not initially provide a grid connection offer against the originally agreed programme. In order to mitigation the potential impacts of this on programme and the ability for Mona to potentially contribute to the 2030 Government targets for offshore wind energy, scoping reports were prepared against four potential points of interconnection (POI) to the grid. In March 2022 NG indicated a strong likelihood for POI at Bodelwyddan. NG confirmed grid connection at Bodelwyddan in May 2022.		

(emphasis added)

3.1.6 There is clearly no ambiguity about what was known by December 2021.

3.1.7 In this way it can be seen that National Grid (rather than the Promoter), by deciding on a POI at Bodelwyddan, also selected the Llanddulas East Point of Landfall and thereby also selected Llanddulas East A and 65% identical Llanddulas East B as the on shore corridor. Llanddulas East C having already been dismissed (prior to December 2021).

3.1.8 There is clearly no ambiguity or misunderstanding about the decisions made and when.

3.1.9 Figure 4.14 from the PEIR report describes 6 points of landfall and up to 16 cable corridors but it was known in advance of the EWG December 2021 meeting that only 1 landfall was viable and therefore, similarly only 1 to 1.5 cable corridors were identified and progressed although it was Spring 2022 before this was crystallised by National Grid's decision as shown in the minutes of EWG Meeting No.3.

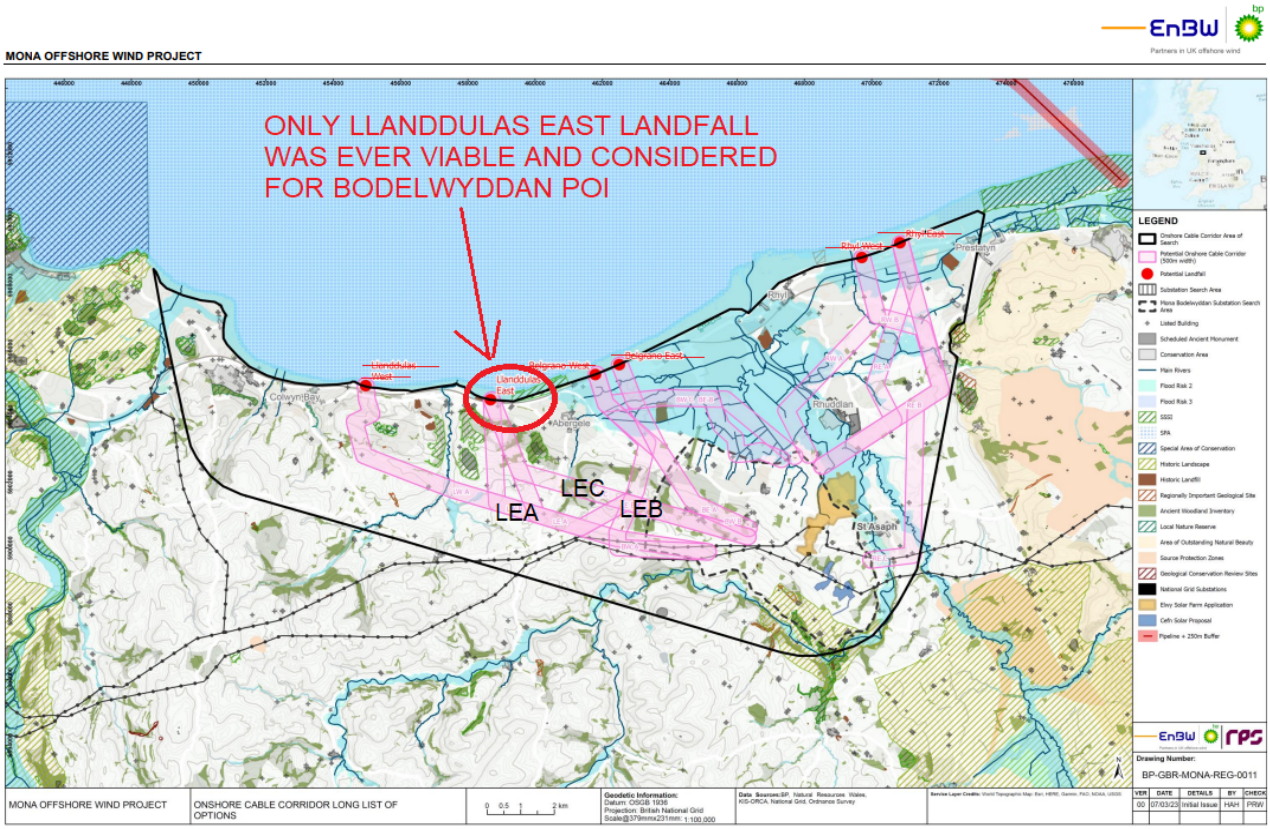


Figure 4.14: Onshore Cable Corridor Long List of Options.

3.1.10 Post National Grid decision, in the Spring of 2022, the Promoter went on to consult with all the landowners and undertake 2 rounds of non-statutory consultation and submit a Scoping Report based on the above and 3 landfall points and 6 cable corridor routes even though they had already been eliminated.

3.1.11 Despite the Promoter's claims in *Volume 1 (Environmental Statement), Chapter 4: Site Selection and Consideration of Alternatives,* the Promoter itself only ever itself "selected" between Llanddulas East A and 65% identical Llanddulas East B and no other options were considered to these.

3.1.12 Llanddulas East A and B routes are identical from Landfall as far east as plot 06-105 which is the Objectors' most eastern plot. From there eastwards Llanddulas East B offers minor deviations to Llanddulas East A for parts of the route back to the substation site. Figure 1.5 (below) from the BRAG report shows the minor alternatives commencing just after and east of the Objectors' land and it was this and similar minor deviations on which the Promoter prepared the BRAG report and consulted on in the April to June 2023 statutory "*consultation"* period.

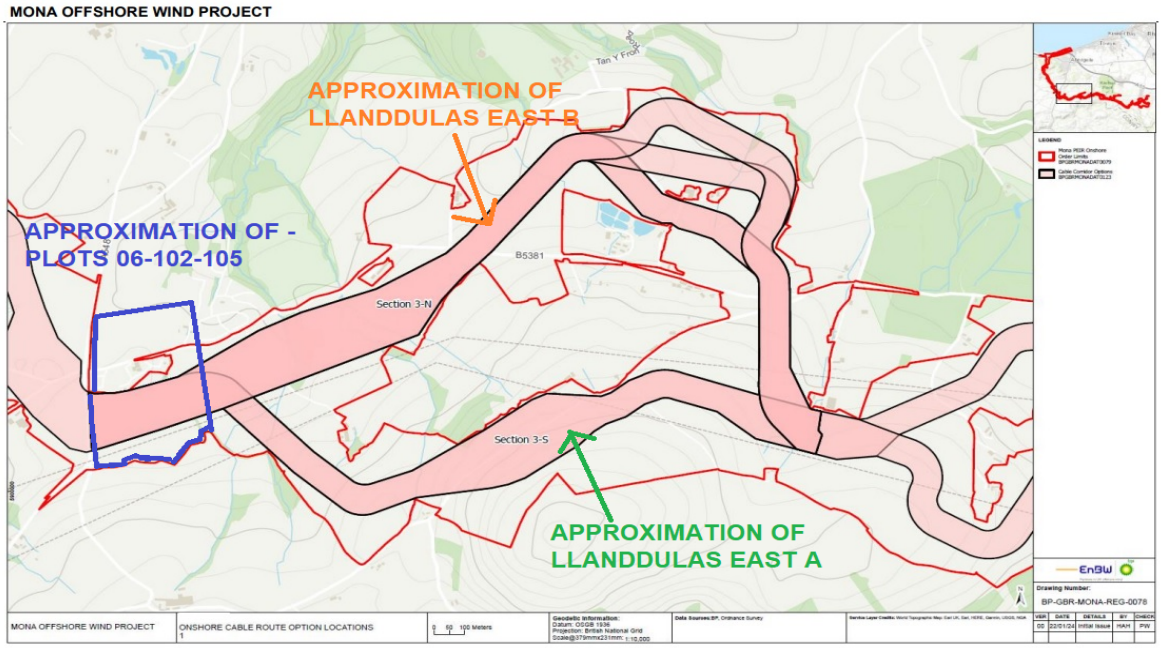


Figure 1.5: Onshore Cable Route Option Locations (Section 3N and 3S).

Document Reference: F5.4.2

3.1.13 What is abundantly clear though is that alternatives for the Objectors land were <u>never</u> developed or considered. However, reasonable alternatives do, in fact, exist.

3.1.14 Alternatives were put to the Promoter prior to the DCO application but merely dismissed by the Promoter without any technical consideration preferring to extol the virtues of its own predetermined route. However the existence of Alternatives A, B and C referred to section 10.3 of the August 7th Submissions shows that reasonable alternatives are available. See below:

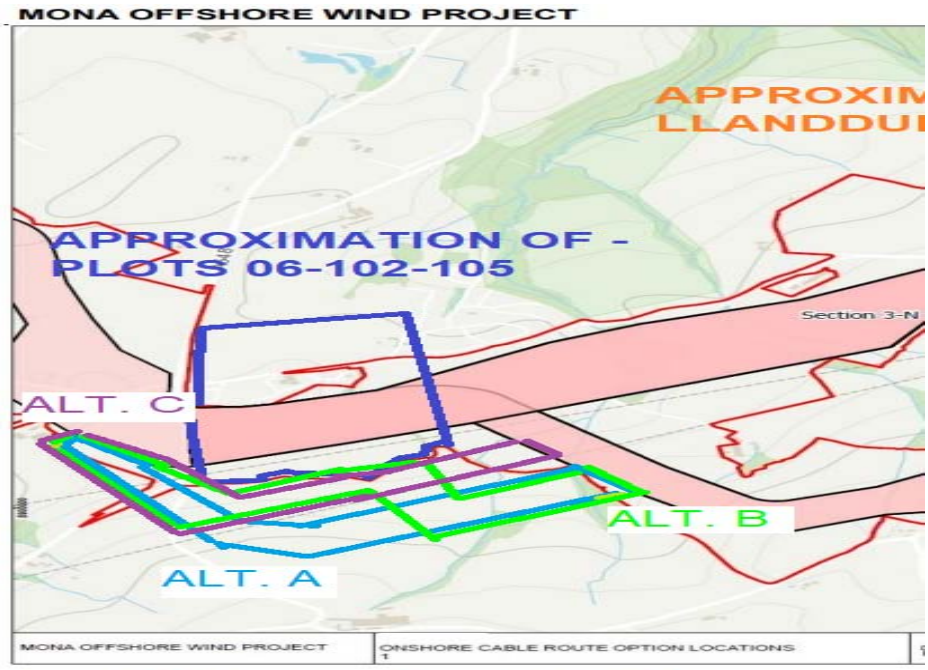


Figure 1.5: Onshore Cable Route Option Locatio

3.1.15 The centres of the AC Line and the 4ZB lines are @200 metres apart at their intersection with the A548 and are 157 metres apart at the point where they cross plot 06-105. These separation distances comfortably allow for the 25m safe distances and substantial working areas between them.

3.1.16 The Promoter however advises that they have not considered these alternatives and that they will not consider these alternatives. In a meeting which took place on 17/9/2024 they advised that *"it was simply too late in the process to consider them"* however, it is clear that had they been put forward March 2022 or even December 2021 then "*it would have been too late in the process*" then as well.

3.1.17 By having not and continuing to not consider these "*reasonable alternatives*" then the Promoter is not able to rely on the consent of statutory powers and the Order is premature. The Panel is respectfully requested to direct the Promoter to adjourn the Order until such time as these reasonable alternatives have been considered.

3.1.18 Further, until such time as these reasonable alternatives have been considered and solid reasons for their elimination established then it is not possible to make a "*compelling case*" for the Objector's land under Section 122(3) of the Act or indeed whether the Objectors land is in fact, "*required*" at all as is requisite under 122(2) of the Act as defined in the Sharkey Court of Appeal case.

3.2 <u>The Promoter has not fulfilled its duty to consult and take account of consultation</u>

3.2.1 This is addressed in Section 9.2.2 and Section 11 of the August 7th Submissions and REP1-083.3 and 16 and 28 and 29 and 43 and Appendix 2 of the September 30th Rebuttal.

3.2.2 Lord Sedley determined that *"if consultation was to be carried out then it should be done **properly***" and he set down the principles of consultation in R v Brent Borough Council, Ex p Gunning (1985) which have come to be known as the Sedley Gunning Principles:

> *"consultation must be undertaken at a time when proposals are still at a formative stage; it must include sufficient reasons for particular proposals to allow those consulted to give intelligent consideration and an intelligent response; adequate time must be given for this purpose; and the* ***product of consultation must be conscientiously taken into account when the ultimate decision is taken****".*(emphasis added)

3.2.3 Section 1.1 above demonstrates the Promoter's timeline whereby the preferred route for each POI was already selected by 12 December 2021 (see minutes of EWG Steering Group Meeting No. 2). Llanddulas East A and 65% identical twin route Llanddulas East B (both corridors being identical from landfall to the eastern extremity of the Objectors Plots) were therefore formally crystallised as the route from Spring 2022 when National Grid confirmed Bodelwyddan as the preferred POI.

3.2.4 This timing is corroborated by the simultaneous commencement of negotiation for ecological surveys and land referencing and making contact with landowners generally by the Promoter's agents.

3.2.5 Despite quite clearly having already predetermined and selected the route and the design being advanced well beyond a "*formative stage*", the Promoter submitted a scoping report based on vague "*Rochdale Envelopes"* and claims to have carried out 2 rounds of non-statutory consultation in addition to landowner consultation based on 3 landfall locations and up to 6 onshore corridors which were already eliminated. There was simply no possibility of the feedback from those "consultations", especially from the Objectors, being "*taken into account"* and indeed it wasn't.

3.2.6 The Promoter instead viewed consultation solely as an opportunity to Promote its Scheme and iterate its requirements whilst referring (threatening- contrary to section 43 of the Welsh Government circular 003/2019) to CPO powers in a thinly veiled attempt to portray the impression that matters are already finalised and the cables and their impact are inevitable and that it was futile to resist. The main aim of the iteration was to persuade landowners to enter into heads of terms.

3.2.7 The Objectors refute the Promoters mantra that it "*is a responsible developer committed to listening to the view of stakeholders including landowners".* The Objectors' experience is very different to that.

3.2.8 Notwithstanding the claims in the Promoter's Consultation Report, the Promoter has clearly not complied with its obligations under sections 42 to 48 and especially under section 49 of the 2008 Act. Neither has it complied with Section 67 of the Welsh Government Circular Ref: 003/2019 Compulsory Purchase in Wales and the Crichel Down Rules or indeed Section 19 of the Guidance on Compulsory Purchase Process and The Crichel Down Rules: February 2018 Update.

3.2.9 The complete failure of consultation on behalf of the Promoter means that it is not able to rely on the award of the statutory powers and the Order is premature. The Panel is therefore respectfully invited to direct the Promoter to adjourn the Order until such time as it has returned the scheme to a formative stage for instance by considering Griff Parry's Alternatives and to consult and take account of the consultation received on those Alternatives before starting to move forward again.

3.3 The Promoter has not demonstrated a compelling case in the public interest outweighing the harm suffered for impacting on Plots 06-102 to 06-105.

3.3.1 This is discussed in more detail in section 9.2.1 of the August 7th Submissions and also REP1-083.2 and 4and 14 and 18 and 38 of the September 30th Rebuttal.

3.3.2 When challenged on this, the Promoter has merely cited 2 documents as its "*compelling case*". However, as far as the Objectors can see, *Section 1.4 of the Statement of Reasons* (App-029) merely lists relevant legislation and where appropriate, the legislation's aims with no attempt to explain how the Scheme meets or exceeds these aims. Likewise *Chapter 2 of Volume 4 of the Environmental Statement* is merely an essay on climate change with no conclusion or understandable means of what the impact of the Scheme would be on that climate change.

3.3.3 On the alternative or balancing side of this important equation then it would seem logical that the Promoter should give some commentary as to the harm to be suffered by individuals by its proposals. However this is not considered anywhere in the Promoter's application documentation. There is a vague ambiguous implication or acknowledgement that there may be some kind of detriment being suffered by its reference to parties being entitled to claim compensation (i.e. as a consequence of suffering detriment or loss) in section 1.12.1.12 of the Statement of Reasons within the section on human rights.

3.3.4 The Objectors believe that such a vague and ambiguous approach to this important test falls well short of the requirements of Section 122(3) of the 2008 Act or sections 7 to 19 of the Guidance to the Act or indeed to sections 10, 16, 30, 31, and 53 of the Welsh Government Circular 003/2019: Compulsory Purchase in Wales and 'The Crichel Down Rules (Wales Version 2020) which all require the case to be "**demonstrated**".

3.3.5 Notwithstanding the above, the Objectors case is that the Promoter's ultimate scheme, as currently proposed, is likely to be highly detrimental to Robert Parry's proposals and will thereby cause considerable harm.

3.3.6 There is however, an opportunity for the Promoter to achieve 100% of the "public benefits" of the Scheme but, given the broad landowner support (as well as deployment of the 2010 Statutory Instrument)[1], a fraction of the corresponding harm to those affected by deploying Alternatives A,B or C instead thereby freeing up the Plots for Robert Parry's Scheme.

3.3.7 The Panel are therefore again requested to direct the Promoter to adjourn its application and carry out a full review of these options and to review and present its compelling case accordingly and in accordance with the requirements.

[1] The Infrastructure Planning (Compulsory Acquisition) 2010 (Statutory Instrument)

4.0 Modifying the Order so that there are balancing constraints on the Promoter in respect of the Plots.

4.1.1 Removing the Plots from the Order would be the optimum solution for the Objectors because it would leave Robert Parry fully free to promote his own proposals and to his own timescale.

4.1.2 Further, the Objectors have indicated that if the permanent impact on the Plots was removed then they may be able to assist with the temporary use of their land including some outside of the current Limits of Deviation, for instance as working area, subject of course, to timescale.

4.1.3 However, and without prejudice to their contention that the plots should be removed, in the event that the Panel do not feel able to recommend removing the Plots from the Order then the Objectors consider that the following issues are relevant.

4.2 Width of Permanent Easement

4.2.1 Section 3.7.2.16 of *Volume 1 of the Environmental Statement, Chapter 3: Project Description* states that a standard width of 30 metres (or wider on occasions) is proposed for the permanent easement however this has been shown to be for reasons of custom and industry practice rather than being due to the fact this amount of land is, in fact, actually "*required*" and "*necessary for the accomplishment"* of the Scheme. Section 12 of the 7th August Submission deals with this and the Promoter provided stand alone document Hearing Action Point Submission regarding the cross section which was rebutted by Griff Parry and itself attracted a further Response from the Promoter Document Number MOCNS-J3303-RPS-10307.

4.2.2 It remains the case however that the Promoter is seeking to have a separation width of 7.5M between trench cable centres on the grounds of thermal derating or heat dissipation but has not provided any calculations or evidence whatsoever to justify this extraordinarily wide area. In any event heat dissipation can be managed by reducing it at source by i.e. reducing electrical resistance by using higher capacity and good quality cables and otherwise using high quality cement bound fill materials, thereby enabling efficient heat dissipation.

4.2.3 The Promoter also seeks to use open trench excavation rather than use trench boards/ sheet piles which would be safer and avoid shallow angled trench walls thereby unnecessarily extending the area between trenches and causing less disruption to the ground.

4.2.4 The Promoter is still seeking to install a two lane haul road through the centre of the easement in line with its custom and practice rather than due to it being "*required"* and "*necessary for the accomplishment of the"* Scheme. This is not a permitted use of the powers in section 122(2) of the 2008 Act and the Guidance to the Act and the tests set down in the Sharkey case.

4.2.5 The unnecessary separation spaces and haul road are all intended for sterilisation as part of the permanent easement and this is unfair and unreasonable.

4.2.6 The Objectors have suggested that a permanent sterilised easement width of say 12m would be sufficient as follows:

	74m WORKING AREA WIDTH BREAKDOWN			COMMENTARY	REVISED WIDTH "REQUIRED"
	Temporary Fence Line and Surface Water Ditch	2.5	m wide		Say 2.5m (if required at all)
	Topsoil and Subsoil Storage Bunds	19.6	m wide	A 2.0M tall bund here could replace with a 6.25m bund width	Say 6.25m
Area Proposed for 30m Perman-ent Easement	Separation Strip between Bunds and Trench Opening	1.0	m wide	unchanged	Say 1m
	Trench	2.5	m wide	using Trench piles could mean a trench of only 0.55m width	Say 0.55m
	Separation Between Trenches	5.0	m wide	there is no construction or maintenance of EMF or thermal justification for the width and a more proportionate spacing with be say 2m	Say 2.5m
	Trench	2.5	m wide	using Trench piles could mean a trench of only 0.55m width	Say 0.55m
	Haul Road (Including Separation to Trenches)	7.0	m wide	vehicle movements can be accommodated with passing places and the haul road could be moved along with the excavation as trenches are completed in any event at the end of construction the road footprint could house the post construction drainage	Say 2.5m
	Trench	2.5	m wide	using Trench piles could mean a trench of only 0.55m width	Say 0.55m
	Separation Between Trenches	5.0	m wide	there is no construction or maintenance of EMF or thermal justification for the width and a more proportionate spacing with be say 2m	Say 2.5m
	Trench	2.5	m wide	using Trench piles could mean a trench of only 0.55m width	Say 0.55m
	Separation Strip between Bunds and Trench Opening	1.0	m wide		Say 1m
	Topsoil and Subsoil Storage Bunds	19.6	m wide	A 2.0M tall bund here could replace with a 6.25m bund	Say 6.25m
	Temporary Fence Line and Surface Water Ditch	2.5	m wide		Say 2.5m (if required at all)
	TOTAL PROPOSED TEMPORARY WORKING AREA	**73**	**Metres**	**ESTIMATED PROPORTIONATE WORKING AREA**	**29.2 Metres**
	TOTAL PROPOSED PERMANENT AREA	**30**	**Metres**	**ESTIMAED PROPORTIONATE PERMANENT AREA**	**11.7 Metres**

4.2.7 The Promoter, however, disagrees but it is clear to a layman that 30 m is very excessive and unjustifiable.

4.2.8 As a way forward the Objectors request that if the Order is to be confirmed in respect of its Plots then the Order should contain constraints to protect the Objectors by for instance obliging the Promoter to use the highest capacity and quality cables to reduce electrical resistance and thereby heat production in need of dissipation. Also that the highest quality cement bound fills are used to surround the cables to ensure efficient heat dissipation so that trench separation distances can be minimised.

4.2.9 The Order should also contain a prohibition on a central haul road being used between cables. The Promoter can choose from having a lane either side of cable cross-section or better still a single haul lane outwith the cable area with passing places.

4.3 **Location of Permanent Easement**

4.3.1 The Limits of Deviation currently include the entire @280 m frontage to the A548 and the Promoter is seeking the freedom to install the cables anywhere of its choosing along this area.

4.3.2 The Promoter previously claimed that there was no access from the A548 into the Objectors land however this has been shown to be patently incorrect as the photograph below demonstrates.

4.3.3 This access is intended to be upgraded and used as the main entrance for Robert Parry's proposals yet it and the spine road as well is under threat due to the ambiguous cable corridor that the Promoter is seeking to reserve for itself.

4.3.4 In total 10.69% of the Objectors' entire site would be sterilised under the Promoter's current proposals. Obviously for the reasons given in 2.2 above, if the permanent easement area could be halved to even say 15 m then the sterilised would be 5.35% which would still be difficult but more tolerable.

4.3.5 If the Promoter could also be constrained so that it kept to the extreme south of the site then this would be of great assistance to the Objectors. Even better to direct the Promoter to follow Alternative routes D or E (as described in Section 10.3 of the August 7th Submissions would mean that both the Promoter's and Robert Parry's scheme could co-exist on this land.

4.3.6 Alternatives D and E involve crossing the AC line pylon line between AC128 and AC 127 and are shown as follows:

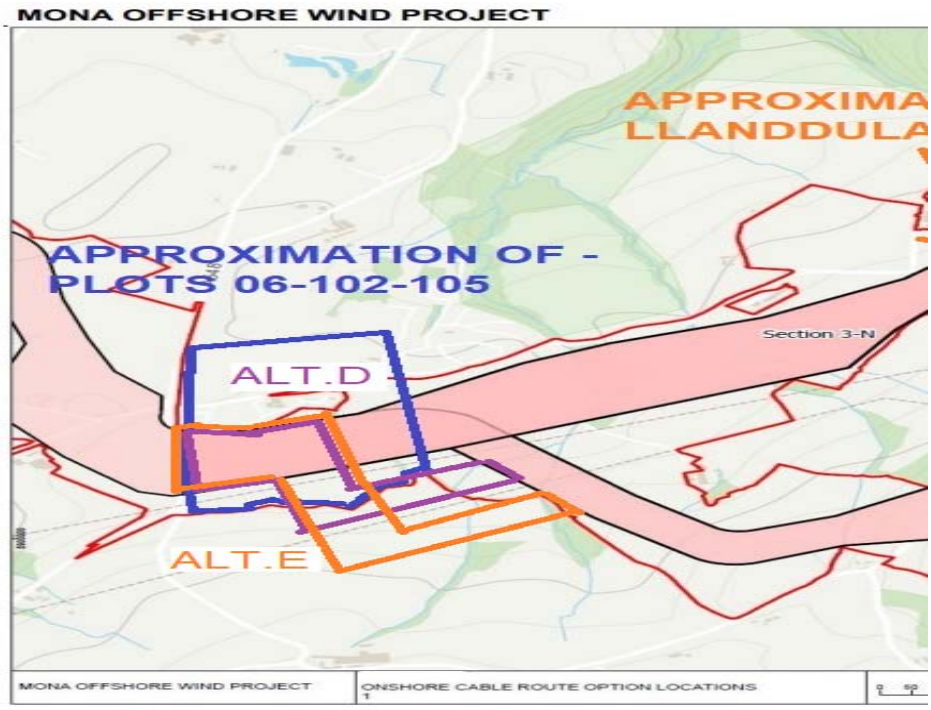
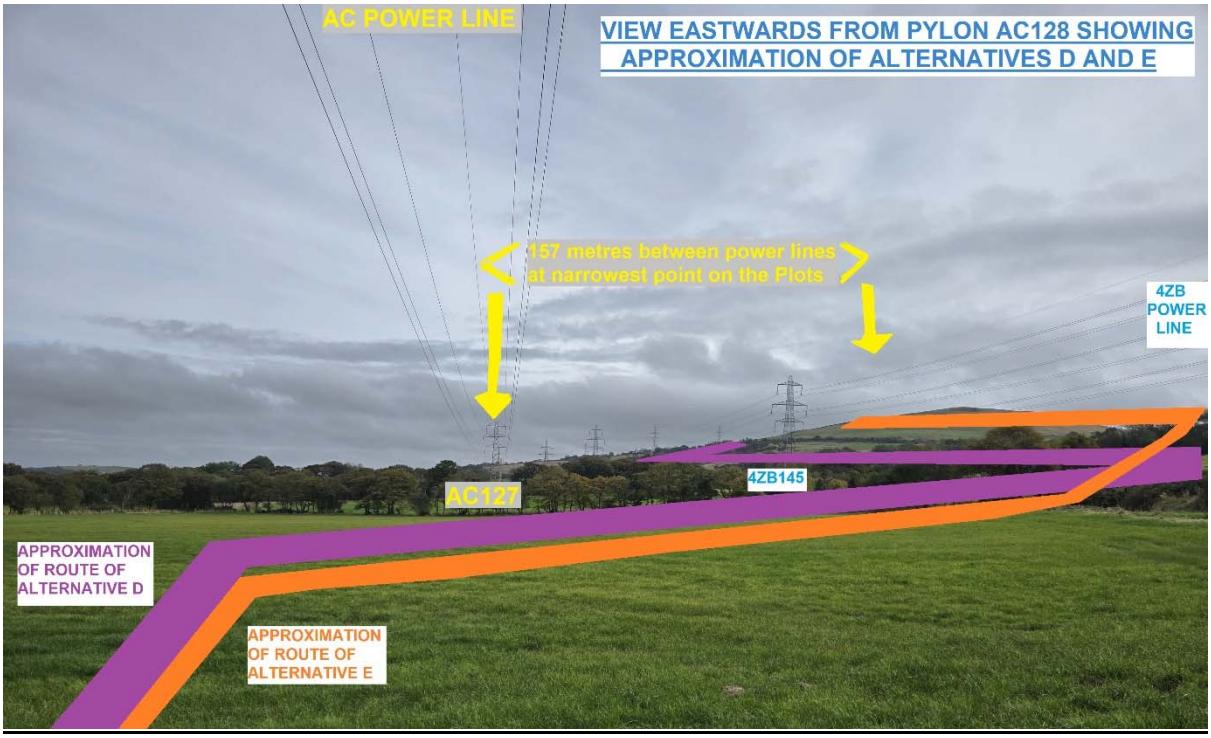


Figure 1.5: Onshore Cable Route Option Locations



4.3.7 In the event that the Plots cannot be removed altogether from the Order then the Panel is therefore respectfully invited to direct the Promoter to consider alternative D and E being, reasonable alternatives and to properly consult on them in line with the requirements of the Act.

4.3.8 The Promoter advises that ecological surveys and investigation etc, have not been carried out for this area but given that the works aren't scheduled to start until late 2026/27 so there is ample time to address these investigations in the meantime.

4.4 Timescale For the Works – Project Timetable

4.4.1 The Limits of Deviation currently include the entire @280 m frontage to the A548 and the Promoter

4.4.2 The Promoter advises that it anticipates confirmation of the Order in early 2025.

4.4.3 Sections 3.3.3.8 and 3.8.1.1 of *Volume 1 (Environmental Statement), Chapter 3: Project Description* states that physical construction is scheduled to commence in 2026. Works 13 and the temporary 190M square construction compound will clearly be required as early as possible in the process as part of the enabling works for much of the rest of the onshore part of the Scheme.

4.4.4 Notwithstanding that we say temporary possession is not even lawful in Development Consent Orders (Barry Denyer-Green)[(2)], it is understood that the Promoter will seek to occupy this and the 100m cable corridor width on 28 day's notice under temporary powers under Article 29 of the Order and is currently seeking 7 years (i.e. up to early 2032) during which the Promoter can serve an Article 29 Notice.

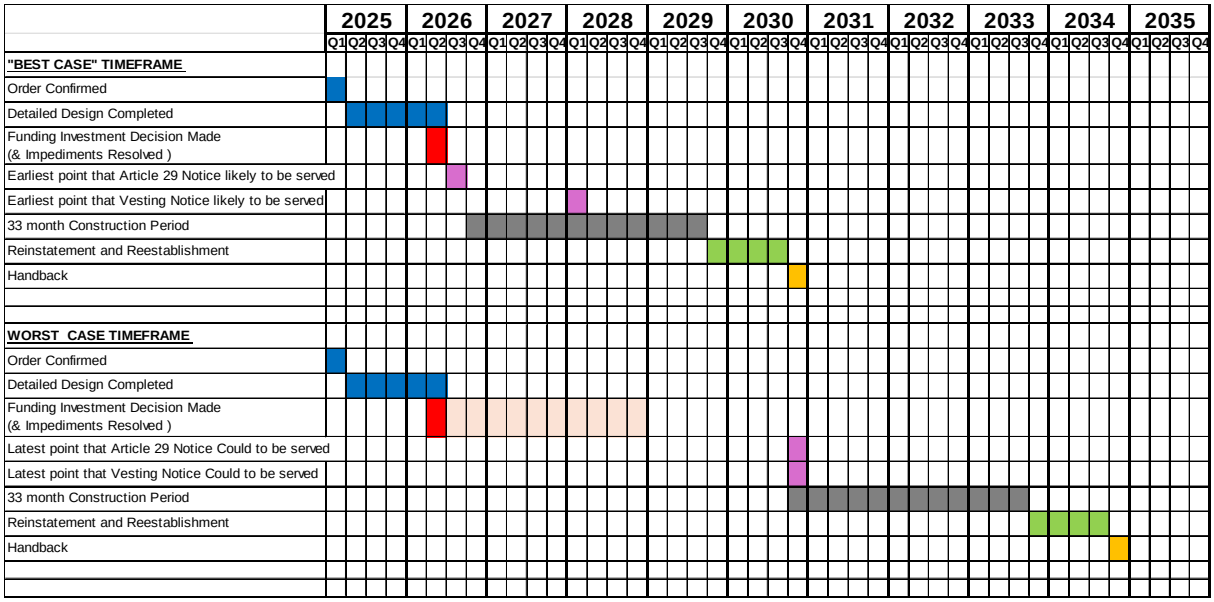
4.4.5 Even if temporary possession powers are lawful in a DCO, Article 29 as drafted does not give a maximum period of temporary occupation of the land provided occupation has been taken before the 7 years expires.

4.4.6 Accordingly and provided the Promoter serves permanent rights notices and occupies the land required within 7 years of Order confirmation then there is nothing to prevent the Promoter being on site for the foreseeable future.

4.4.7 Section 3.7.2.43 of the *Volume 1 (Environmental Statement), Chapter 3: Project Description* states that the onshore cabling will take 33 months although there will be reinstatement and seasonal reestablishment on top.

4.4.8 As the example Gant Chart below shows, the most optimistic scenario for handback of the land would therefore be late 2030 which itself is a serious detriment to Robert Parry's proposals.

[2] LAW REFORM: TEMPORARY POSSESSION OF LAND : THE LEGAL IMPLICATIONS ; BARRY DENYER- GREEN (pp11-15)



4.4.9 As the Order is currently drafted however the temporary and permanent rights (vesting) notices can be served at the very end of the 7 year period and there is, in fact, no need to commence actual physical construction until year 7 or even possibly later. This currently allows the Promoter to retain the land until late 2034 before handback or even beyond that. This is again unfair and unreasonable.

4.4.10 The only justification that the Promoter has provided for these notice timescales is that 7 years was the period permitted on other schemes such as Hornsea Three, Norfolk Boreas, Norfolk Vanguard East Anglia One North and East Anglia Two and article 2 of Hornsea Four. Custom and industry practice however does not however justify it especially when balanced against the harm it has the potential to cause to those affected.

4.4.11 The Panel is therefore respectfully requested to recommend some constraints on the extremely onerous notice timeframes. For instance Compulsory Purchase Orders ordinarily only permit a maximum of a 5 year window for notice serving with the intention that the land be fully developed and vested within that timescale. However promoters can secure an additional 3 years plus by strategic service of Notice to Treat. This Promoter is seeking to be granted a further 2 years on top of that.

4.4.12 If the Promoter is able to satisfy the Panel as to the lawfulness of Articles 29 and 30 and the Panel feel able to recommend its retention in the Order at all then clearly both it and the permanent rights powers need qualification. Such suggestions are as follows:

4.4.13 Article 29 and 30 should only be exercisable on 90 days notice rather than 28 days

4.4.14 Article 29 powers should not be exercisable over any area that the Promoter is aware that permanent rights are required. Given that the Promoter will have completed the detailed design in the 12 months post Order confirmation and be fully in possession of the permanent rights information then it can serve permanent rights notices in respect of those notices which will provide a number of protections to affected parties for instance it will set the valuation date and give the affected party access to the proper compensation provisions of the “Compensation Code” including the impacts of the temporary possession (due to the Scheme) rather than the claimant have to rely on the ambiguous and unsatisfactory provisions of Section 5) of Article 29.

4.4.15 Articles 29 and 30 should have a finite life – ideally 12 months renewable by agreement between the parties but to an absolute maximum of 33 months (being the stated construction period) This is considered more than adequate for this purpose.

4.4.16 Article 21 of the Order needs to be reduced to 3 years (which can still be extended to 6 years and beyond by strategic service of Notices). Given that, as mentioned in 4.4.14 the permanent rights will be fully available 12 months after Order confirmation, then the Promoter will still have a further 2 years to serve Notices which in any event can be strategically extended.

4.4.17 These modifications would also bring the Order in line with the spirit of and what was intended in Section 19 of the Guidance on Compulsory Purchase Process and The Crichel Down Rules: February 2018 Update and/ or Section 67 of the Welsh Government Circular Ref: 003/2019 Compulsory Purchase in Wales and the Crichel Down Rules which state:

> *"Compulsory purchase proposals will inevitably lead to a period of uncertainty and anxiety for the owners and occupiers of the affected land. Acquiring Authorities should therefore consider:*
>
> *…….*
>
> *keeping any delay to a minimum by completing the statutory process as quickly as possible and taking every care to ensure that the compulsory purchase order is made correctly and under the terms of the most appropriate enabling power*
>
> *……"*

4.5 Funding and Impediments to the Scheme

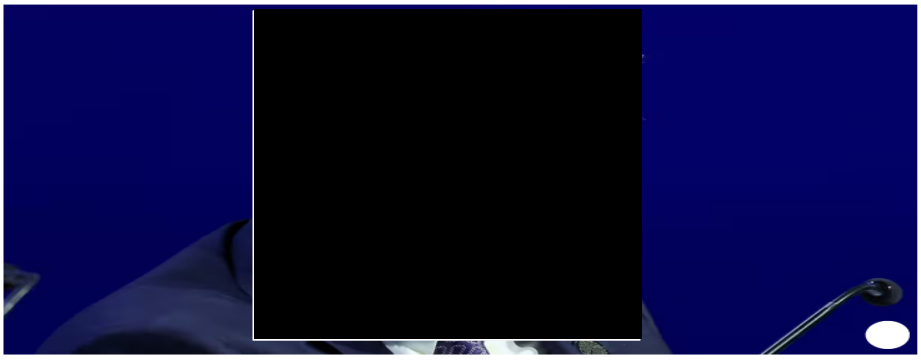
4.5.1 There are clearly a number of hurdles for the project still to surmount. These hurdles contribute to, but also include the Final Investment Decision ("FID") which will finally be the stage at which the Promoter will actually be committed to the scheme and is expected in late 2026 or possibly early 2027.

4.5.2 It is clear that project viability is a necessary condition for a positive FID yet the best that the Promoter can offer here is in 1.6.1.1 of the Funding Statement where the Promoter advises "*that it is confident that the Mona Offshore Wind Project will be commercially viable".* We are informed that appraisals have been carried out and presumably these could support its case but the Promoter has chosen not to share them. Accordingly a reasonable person acting reasonably must therefore conclude that they do not, in fact, support the viability in its current business case.

4.5.3 The Order, as currently drafted, however, permits the Promoter an extraordinarily long window of time (during which landowners are left in limbo) whilst the Promoter lobbies and argues its case until it eventually succeeds or, fails and abandons the scheme without having served notice and thereby free of any compensation liabilities.

4.5.4 The Promoter's approach to proving funding is particularly surprising to the Objectors as this action seems remarkably similar to merely to sending copies of statement from the "Bank of Mum and Dad". In the same way as offspring have no draw down rights for their parents bank then likewise no evidence of such rights have been advanced by the Promoter.

4.5.5 Against those difficulties, the Promoter is also battling the emerging new policy of its main parent company, namely BP. The new CEO, Murry Auchincloss, is fully on record pledging a "*more pragmatic' approach to BP's green targets*" whilst "*reversing the move away from fossil fuels*" and "*imposing a hiring freeze*" and "*halting new offshore wind projects*." (The Guardian, 27 June 2024)



BP

This article is more than **1 month old**

BP imposes hiring freeze and halts new offshore wind projects

New boss Murray Auchincloss reverses move away from fossil fuels, which had weighed on company's share price

Julia Kollewe *and* Jillian Ambrose

Thu 27 Jun 2024 16.35 BST

The head of BP has imposed a hiring freeze and halted new offshore wind projects, in an apparent attempt to placate investors who are unhappy with the oil company's green targets.

Murray Auchincloss, BP's former finance chief, took up the role of CEO in January after the shock departure of his predecessor, Bernard Looney, with a promise to focus on delivering value for shareholders.

Looney, who had committed BP to some of the industry's greenest climate goals, was ousted last September for failing to disclose relationships with colleagues.

The decision to slow BP's green ambitions has stoked concerns that Looney's plan to move the company away from fossil fuels, with a pledge to "become a net zero company by 2050 or sooner", may soon be derailed.

BP has come under pressure from shareholders over its green targets because some renewable projects have proved more costly than expected, and profits from oil and gas have soared after Russia's invasion of Ukraine more than two years ago.

In response, the company set out plans earlier this year to cut oil and gas production by just 25% between 2019 and 2030 - well short of its previous target of a 40% reduction over the same timeframe.

Greenpeace UK said BP's plans were "disappointing but sadly unsurprising".

Areeba Hamid, its joint executive director, said: "Murray Auchincloss had a chance to build on his predecessor's legacy and become part of the solution to the climate crisis, rather than its harbinger. Instead, BP is following other fossil fuel majors by abandoning renewables and doubling down on oil and gas in the hopes of a quick buck."

Auchincloss is reportedly looking at investing in and possibly acquiring new oil and gas assets to strengthen BP's existing operations, particularly in the Gulf of Mexico and the shale basins acquired from the Anglo-Australian miner BHP in Texas.

Earlier this month BP's rival Shell set out its own plans to scale back its green growth ambitions, reducing the number of staff working on low-carbon solutions by about 200 roles while shifting the focus towards high-profit oil projects and expanding its gas business.

Alice Harrison, the head of fossil fuels campaigning at Global Witness, said: "Since the energy crisis began earning [BP] record-breaking profits, it has shown its true colours, slashing its climate targets and renewables investments in favour of earning a quick buck from increased fossil fuel production."

Over the past four years, BP has built up a sizeable portfolio of offshore wind

projects capable of generating 9.5 gigawatts of energy in total in the UK, Germany and the US that are yet to be developed. It wants to focus on these assets, it is understood, rather than bidding for new renewable projects.

It has reassigned dozens of people tasked with finding new renewables opportunities to its offshore wind projects in Britain and Germany, Reuters reports, and could make some job cuts in renewables. The hiring freeze is expected to have a few exceptions for frontline roles.

BP shares were up more than 1% on Thursday, but have underperformed rivals in recent months, prompting speculation that the company could be a takeover target. Looney set out a "net zero" plan that originally aimed to cut the company's oil production by 2030, while others plan to increase their fossil fuel production.

BP is also investing in biofuels and low-carbon businesses that can generate returns in the short term. A week ago the company agreed a $1.4bn (£1.1bn) deal to take full ownership of its Brazilian sugar and ethanol joint venture, but it said it was scaling back plans for development of new biofuels projects.

BP said: "As Murray Auchincloss said in February, BP's destination - transforming from international oil company to integrated energy company - is unchanged, but we are going to deliver as a simpler, more focused and higher-value company.

"We set out six priorities that underpin this, including driving greater focus into the business, on to activities that create the most value, as well as delivering both the next wave of efficiencies and BP's growth projects."

Auchincloss has pledged a "more pragmatic" approach to BP's green targets since taking up the CEO role permanently in January. In May, BP said it would cut $2bn of costs by the end of 2026, after reporting lower than expected profits for the first quarter of the year. Auchincloss said he planned to make the savings by choosing fewer new projects to invest in over the coming years.

4.5.6 Clearly this stark and abrupt policy change within BP places the entire Mona venture at serious risk and has ramifications on whether or not the FID will ever be favourable (even if the Promoter can eventually prove viability). However, as things currently stand the Order means that the Promoter, in trying to overcome these issues, can leave landowners in limbo until late 2030 before notices (permanent and or temporary) have to be served. Further and as the Panel will be aware from my response to REP1-083.15 in the September 30th Rebuttal then there is no right to any compensation for actual impact and losses until the permanent rights notices are in fact served. This would leave the Promoter able to walk away financially free from all the impacts and losses that it has caused in its endeavours.

4.6 **The Heads of Terms**

4.6.1 Notwithstanding 3.2 above and in particular, 3.2.6 the Promoter has viewed "*consultation*" as an opportunity to promote its scheme and cajole affected parties to enter into the heads of terms which give it the same or greater powers than if the Order was confirmed without modification. In particular section 21 of the Heads of Terms is particularly onerous not only containing a "gagging clause" towards making representations to the Order but also precluding planning applications or any dealings at all with the property:

21.	**GRANTOR'S OBLIGATIONS AND PROTECTION OF OPTION AGREEMENT**	The Grantor shall not during the Option Period or following the Construction Notice and until the Works are completed: a) sell the Grantor's Property without notifying the Grantee and procuring a direct covenant from the incoming purchaser to comply with the Grantor's obligations in the Option. b) lease, charge or otherwise dispose of the Grantor's Property without obtaining the consent of the Grantee not to be unreasonably withheld or delayed; or c) permit or allow anything to be done on the Option Area or any part of it which might interfere with the rights under the option, the Works or the Project thereafter. The Option will contain a consent by the Grantor to registration of a restriction on the Grantor's title to protect those provisions. During the Option Period the Grantor and Occupier are not to carry out activities within the Grantor's Property that may prejudice the rights to be acquired by the Project, other than usual agricultural operations and cultivations, unless they have prior written consent of the Grantee (not to be unreasonably withheld). During the Option Period the Grantor [and Occupier] are not to object or express opposition to any DCO application, planning application, consent or appeal by the Grantee or make any planning application which could interfere with the proposed Works.

(emphasis added)

4.6.2 A meeting was held between representatives of the Promoter and the Objectors on 17/9/2024 to explore if there was common ground on which some measure of agreement could be reached. The output of the meeting was as follows:

4.6.3 The Promoter acknowledged that they had been advised by the Objectors since the first contact that proposals were being developed for this land but advised that this was a very common theme that affected parties expressed in a CPO consultation when first approached and so they tend not to take such comments seriously.

4.6.4 No consideration had been given to removing the Objectors' land from the limits, by for instance going with alternative options A,B,C,D and E described in the August 7th Submissions. – The Promoter advised that the reason for not considering these alternatives was solely and simply because it is "*too late in the process*".

4.6.5 The Promoter is not prepared to restrict itself to the southern part of the Objectors' land because this would be a constraint to detailed design and a "*bottleneck to the scheme*" generally. The Promoter did however confirm that there was no reason that the cables could not commence at a distance of a little over 25 m away from the cables on the AC Pylon line.

4.6.6 For the same reasons, the Promoter is not prepared to restrict itself to a permanent sterilised easement corridor less than 30 metres wide although they did agree that it was quite possible that the ultimate width could be less than this width. It was confirmed that it was quite common to substantially reduce the width in constrained areas (provided thermal issues can be addressed) and that in fact, the central haul roads can indeed be

located to the outside of the cable corridor. It was also noted that using higher capacity cables (thereby curtailing electrical resistance) could greatly assist with heat produced by that cable although other attendees representing the Promoter advised that this could not be considered due to "*cost*".

4.6.7 The Promoter is not prepared to attempt to cross the AC line pylons between tower AC128 and AC127 (as per Alternative routes D and E) as this would involve land outwith the Limits of Deviation and would require further consideration for ecology and other due diligence reasons. Notwithstanding that the landowners affected are prepared to support this, the reason for dismissing it is again due to the Promoter and DCO timetable rather than due to any physical construction or other constraint.

4.6.8 The Promoter is not prepared to consider a shorter notice serving window in respect of the Objectors land due to the risk again of the matter becoming a bottleneck for the project.

4.6.9 Alternative Compound locations to the one on the Objectors land are likewise not being considered by the Promoter although they did believe it may be possible to reduce it in size during detailed design – this is the most disruptive aspect to Robert Parry's scheme as the compound is likely to the set up as a preliminary matter at the commencement of the construction contract and will likely remain until the very end of the scheme and in fact until establishment of the reinstatement has been successful.

5.0 Conclusion

5.1 The evidence shows that there are numerous instances whereby the Promoter's application has not fulfilled its obligations and duties under the Act that enables the Order.

5.2 There are also issues with the Order including land for reasons of convenience and custom and industry practice which do not meet the strict tests set down in caselaw such as Sharkey. This is not only wasteful of land but it also causes severe ambiguity for others trying to plan around the Promoter's intentions.

5.3 Likewise the Promoter is seeking unreasonable notice serving timescales based on custom and practice and previous schemes (and no doubt, convenience) rather than because these timescales are actually justified and required.

5.4 All these matters come at a cost to those affected and we are confident that the Panel will be able to see the patent unfairness and unreasonableness of the Promoter's position particularly with regard to the Objectors and will wish to report on this to the Secretary of State.

5.5 The Objectors' strong preference is that their Plots are removed from the Order. However, the Objectors do appreciate that ultimately, the Secretary of State will be obliged to determine the Order in accordance with section 104 and even section 106 of the Act which, to an extent, may override these relatively local considerations for UK national policy reasons.

5.6 However Section 104 and 106 of the Act make no direction or limit as to modification of the Order which could allow for both Schemes to co-exist reasonably successfully. Subject to the National Grid POI decision, the Promoter committed itself to the Objectors Plots before December 2021 (as is clearly evidenced in the EWG meeting minutes) thereby predetermining the matter and precluding itself from being able to take account of any consultation responses to the contrary of its predetermined route.

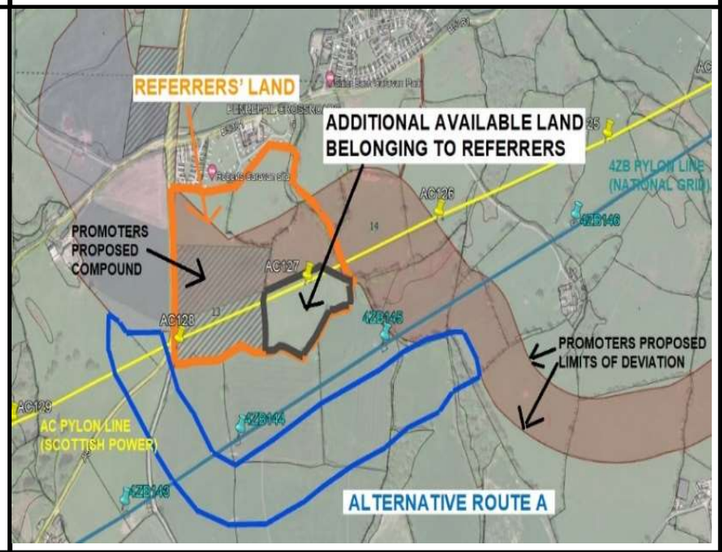
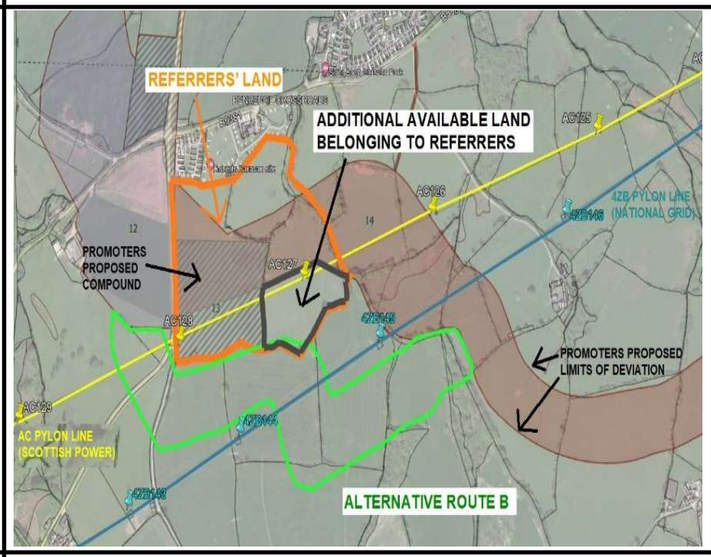
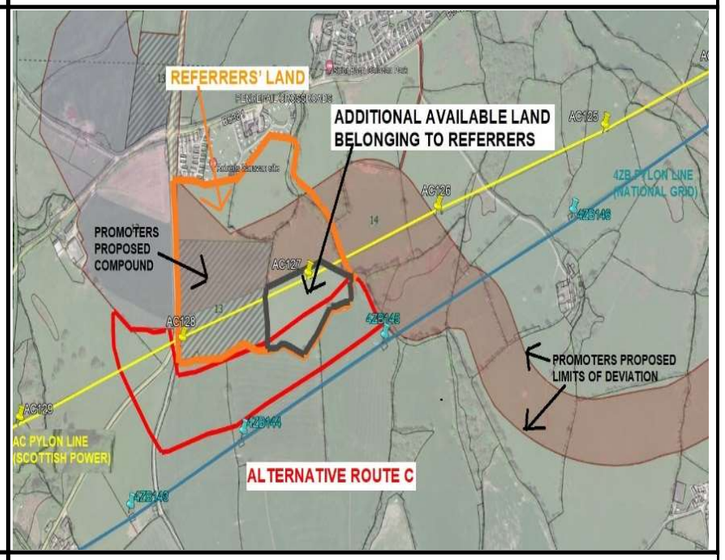
5.7 This belligerence and refusal to accommodate remains the case as evidenced by the outputs of the meeting of 17 September 2024 however the reasons for not engaging about this are merely commercial i.e. unwelcome "*bottleneck constraints*", costs (commerciality) and timeframe.

5.8 Nobody wants to have to work around constraints if they do not have to but given the Promoter's failings in meeting basic essential criteria of the Act, then surely it should expect to have to be more accommodating.

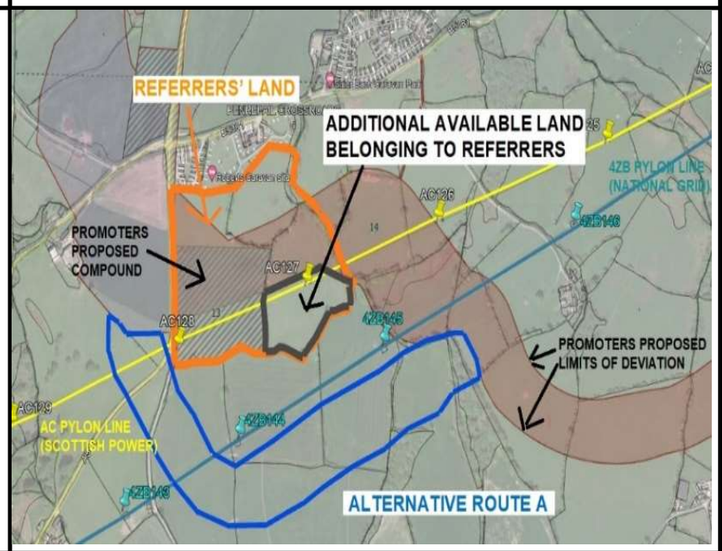
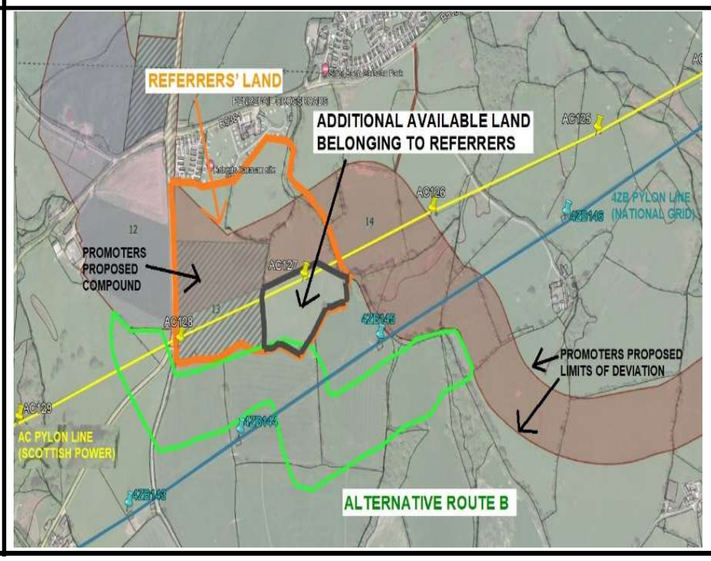
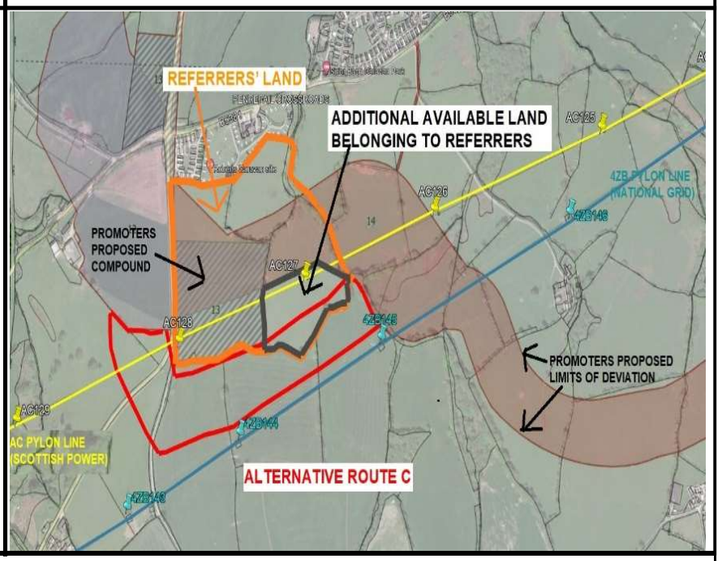
5.9 Due entirely to the matter of pre-determination rather than any fault of their own, the Objectors have been unable to make any progress in securing concessions to protect their proposals from the Promoter and consequently, find their proposals to be in serious jeopardy from both a land use and timing point of view.

5.10 Accordingly the Objectors have no option but to respectfully request, without prejudice to the removal of the Plots entirely, that the Panel recommend that the Secretary of State modify the Order so that the temporary working and permanent easement areas are reduced in line with the table shown in point 4.2.6 above (or point 3.48 of the August 27th Supplementary Submissions (or similar distances - subject to reasonable further discussion between the parties) and also that the permanent sterilised easement corridor is kept to the far south of the site as possible and as close to the AC line pylons as possible and ideally crossing the AC line perpendicularly between AC128 and AC127 as suggested in Alternatives D and E. Finally that the notice serving periods in respect of the Objectors' land be modified in line with section 4.4.13 to 4.4.16 above.

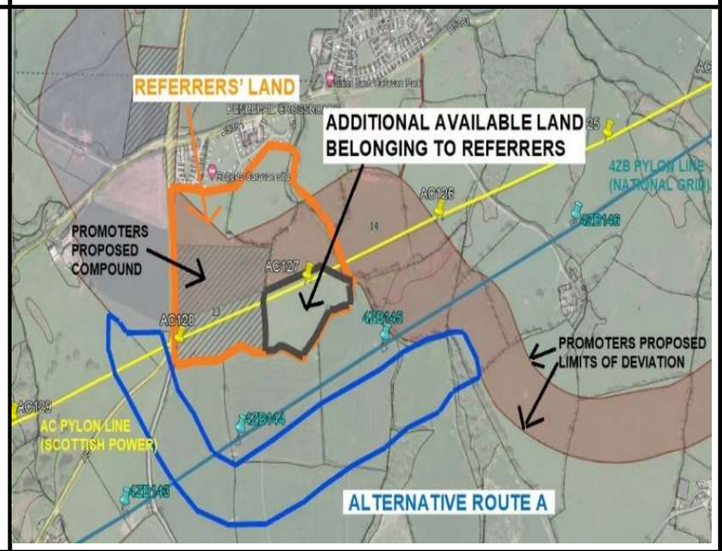
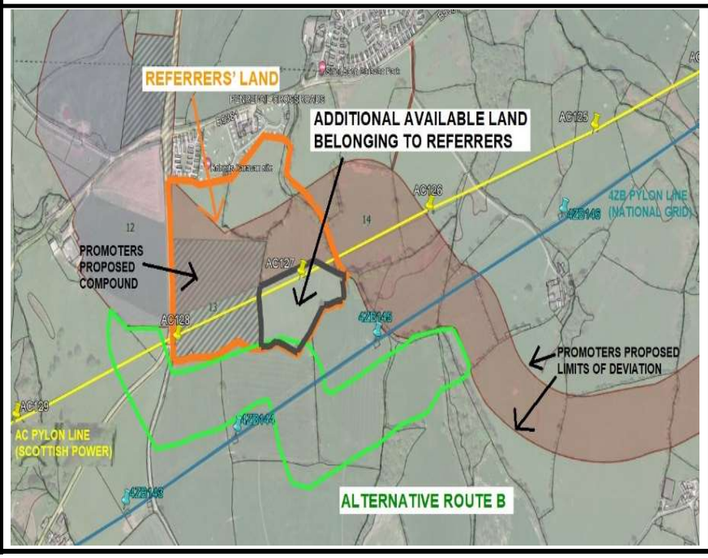
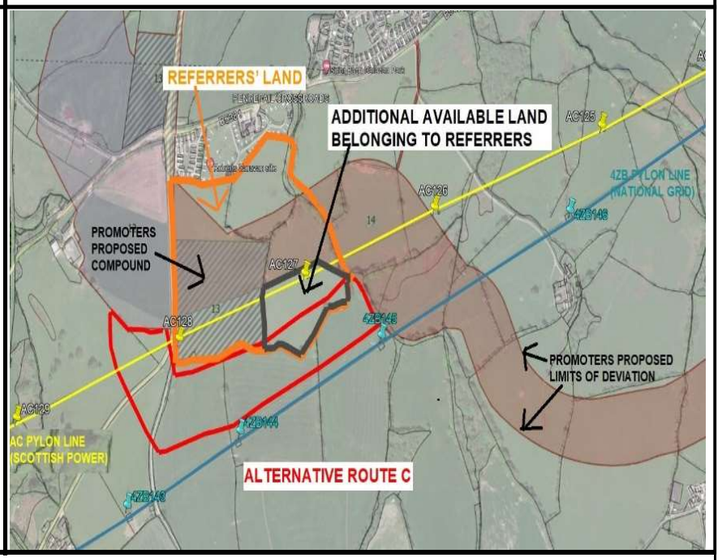
ALTERNATIVES TO CURRENT PROPOSALS ON PLOTS 06-102 TO 06-105 FOR MONA OFFSHORE WIND POWER TRANSMITTAL

	ALTERNATIVE A	ALTERNATIVE B	ALTERNATIVE C
Plan / Markup			
Description	Continue south out of plot 06-100 and cross the A548 to the south of the currently proposed location (crossing the AC SPEN pylon line) - into land in title no. WA432545 -beneath the single lane -into land contained within title no. CYM195840 - crossing the 4ZB line between towers 143 and 144 -rejoin the currently proposed alignment land within title no. CYM683618 -continuing along the existing route. The proposed 100m working corridor is shown along the route and it is edged blue and entitled Alternative Route A on the figure above :	Continue south out of plot 06-100 and cross the A548 to the south of the currently proposed location (crossing the AC SPEN pylon line) - into land in title no. WA432545 -beneath the single lane -into land contained within title no. CYM195840. HOWEVER continue the alignment south of the AC pylon line and north of the 4ZB pylon lines until the 4ZB line Pylon line crossed slightly to the east between towers 144 and 145 - continuing in CYM 195840 and rejoin the currently proposed alignment land within title no. CYM683618 -continuing along the existing route. The proposed 100m working corridor is shown along the route and it is edged green and entitled Alternative Route B on the figure above :	Continue south out of plot 06-100 and cross the A548 to the south of the currently proposed location (crossing the AC SPEN pylon line) - into land in title no. WA432545 -beneath the single lane -into land contained within title no. CYM195840. HOWEVER continue the alignment south of the AC pylon line and north of the 4ZB pylon lines - continue in CYM 195840 and rejoin the currently proposed alignment land within title no. CYM683618 and cross to the south of the 4ZB line in the same way as proposed in the current route. -continuing along the existing route to Bodelwyddan. The proposed 100m working corridor is shown along the route and it is edged red and entitled Alternative Route C on the figure above :
Length of Cabling required to get back on line in Plot 06-106	This route option gives a slightly longer route by an additional @ 163m over original route from the edge of 06-100 to the meeting point within plot 06-106. This amounts to an additional 1.08% of cabling over the power transmittal route which is negligible.	This route option gives a slightly longer route by an additional @ 179m over original route from the edge of 06-100 to the meeting point within plot 06-106. This amounts to an additional 1.19% of cabling over the power transmittal route which is negligible.	This route option gives a slightly shorter route by saving @ 93.3m of cabling over original route from the edge of 06-100 to the meeting point within plot 06-106. This amounts to a saving of 0.62% of cabling over the power transmittal route.
Topographical levels	This alternative route corridor reaches up to 196m above sea level compared to 168m altitude in plot 06-101 - a negligible difference given the route undulations up from sea level in Abergele and back down to Bodelwyddan in any event.	this would be similar to Alternative A however the highest peak is close to the single track road crossing and this is eliminated in Alternative B so that the land was only some 10-15m higher	This alternative route corridor reaches up to 180m above sea level compared to 168m altitude in plot 06-101 - a negligible difference of only 10-15M given the route undulations up from sea level in Abergele and back down to Bodelwyddan in any event.
Landownership			
CYM566178	**Mr L Roberts**	The Promoter is in ongoing negotiations re plot 06-100 and whilst the owner does not welcome the cables in his land it does seem likely that terms will be agreed The Owner does not consider that extending he cables slightly to the south of plot 06-106 would make much difference	
A548	**Conwy Council**	Standard statutory Consultee consultation on other highways	
WA432545	**Mr. S Roberts (unrelated)**	This landowner is an owner occupier but is very difficult to contact and endeavours are being made to reach him.	
Unnamed Road / Track	**Conwy Council**	Standard statutory Consultee consultation on other highways	

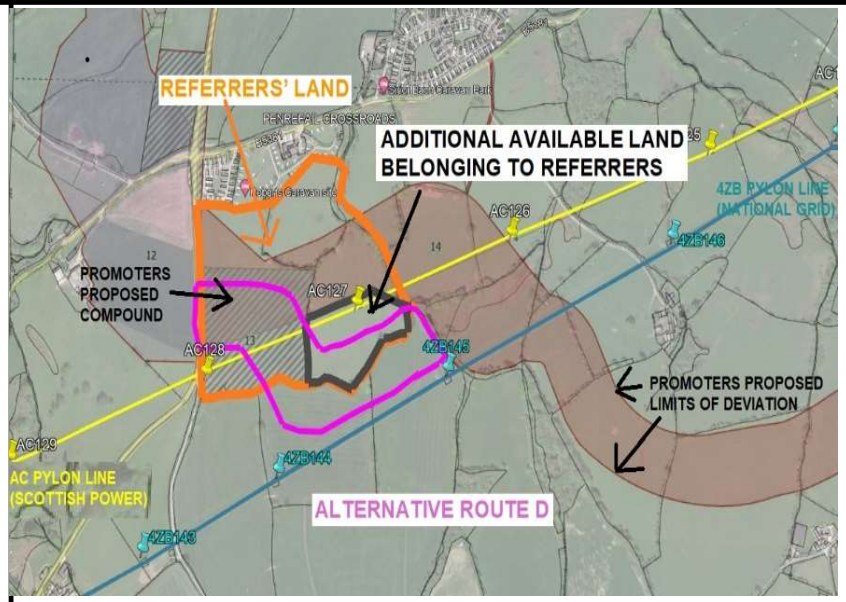
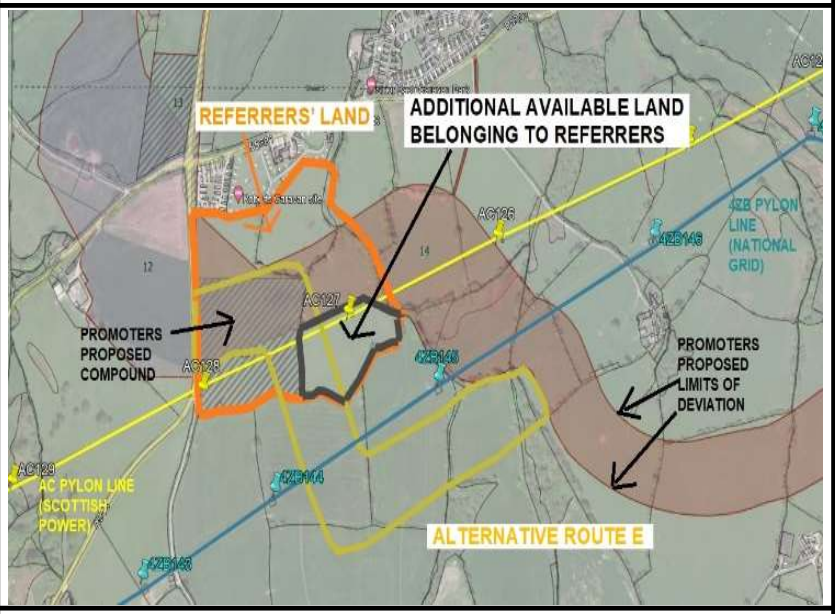
ALTERNATIVES TO CURRENT PROPOSALS ON PLOTS 06-102 TO 06-105 FOR MONA OFFSHORE WIND POWER TRANSMITTAL

		ALTERNATIVE A	ALTERNATIVE B	ALTERNATIVE C
Plan / Markup				
CYM195840	**Mr. and Mrs. Williams**	Party already affected in plots 06-108 & 07-110 and have indicated that, subject to negotiation, they would be amenable to negotiating for additional land in CYM195840 as well as this land is at the periphery of their holding and the impact could be managed.		
CYM683618	**Messrs. Davies**	These landowners are already affected re plot 06-108 and the overall impact on them would be less		
Trench V trenchless Existing Position		The scheme already currently provides for trenchless crossings beneath the A548 (Sections 1.3.2.16 and 1.3.2.22 of the Statement of Reasons) and then again over the water course that runs adjacent to high quality hedgerow G58 and again beneath the same watercourse that runs alongside G63/G64 whilst trenchless is also proposed for crossings beneath the AC and 4ZB pylon lines. These total 5 crossings for the 4 cable circuit ducts totalling i.e. 20 non dig crossings in total.		
Requirements for Trench V trenchless in relevant Alternative		Alternative A offers the opportunity of a single directional drill from land in CYM566178 (Plot 06-100) D13:D18 just north of the AC line and between AC129 and AC128 over the full distance to the south of the 4ZB line between tower 4ZB143 and 4ZB144. This would be a distance of 270m (between Shaft 01 in land title CYM566178 to shaft 04 in land title CYM195840 on the following figure) which would be comfortably achievable with these small diameter Tunnel Boring machines and give a saving in cost and to the project timetable. Alternatively the Promoter could choose to tunnel shorter distances i.e. beneath the AC line pylons then beneath the A548 into the land within title no. WA432545 then beneath the single lane track into land within title no. CYM195840 and then once again beneath the 4ZB pylon line. This would give rise to 4 crossings for the 4 cable circuit ducts totalling i.e. 16 non dig crossings in total. which is less than the current route provides for.		
Crossing AC & 4ZB lines		This solution achieves a perpendicular crossing of the pylon lines which is preferred by network operators.		
Biodiversity Implications				
Cat A High Quality Hedgerow G49		Can be retained under Alternatives A, B, C, D and E		
Cat A High Quality Hedgerow G50		Can be retained under Alternatives A, B, C, D and E		
Cat A High Quality Hedgerow G51		Can be retained under Alternatives A, B, C, D and E		
Cat A High Quality Hedgerow G52		Can be retained under Alternatives A, B, C, D and E		
Cat A High Quality Hedgerow G53		Can be retained under Alternatives A, B, C, D and E		
Cat A High Quality Hedgerow G54		Can be retained under Alternatives A, B, C, D and E		
Cat A High Quality Hedgerow G55		Can be retained under Alternatives A, B, C, D and E		
Cat A High Quality Hedgerow G58		Can be retained under Alternatives A, B, C, D and E		
Cat A High Quality Hedgerow G59		Can be retained under Alternatives A, B, C, D and E		
Cat B High Quality Hedgerow G60		Can be retained under Alternatives A, B, C, D and E		
Cat B Mod Quality Hedgerow G61		Can be retained under Alternatives A, B, C, D and E		
Cat B Mod Quality Hedgerow G62		Can be retained under Alternatives A, B, C, D and E		

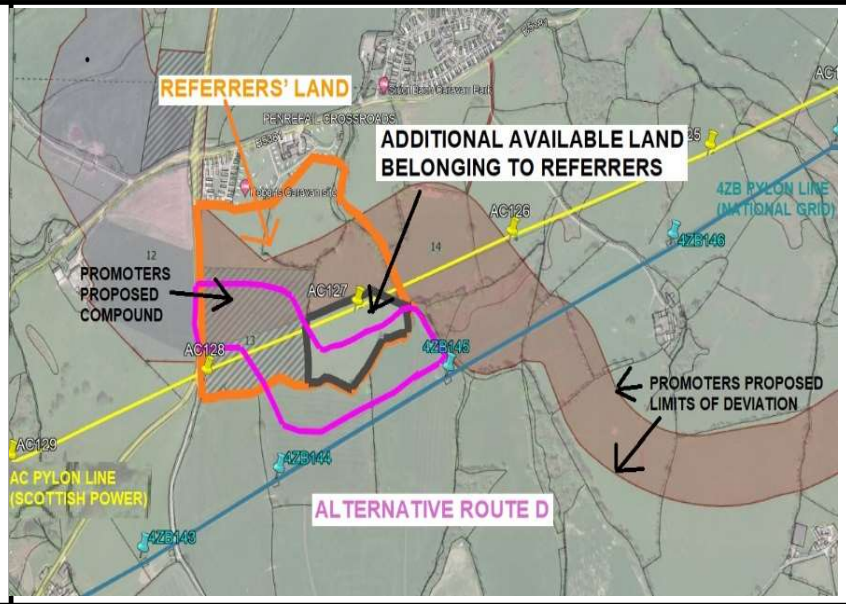
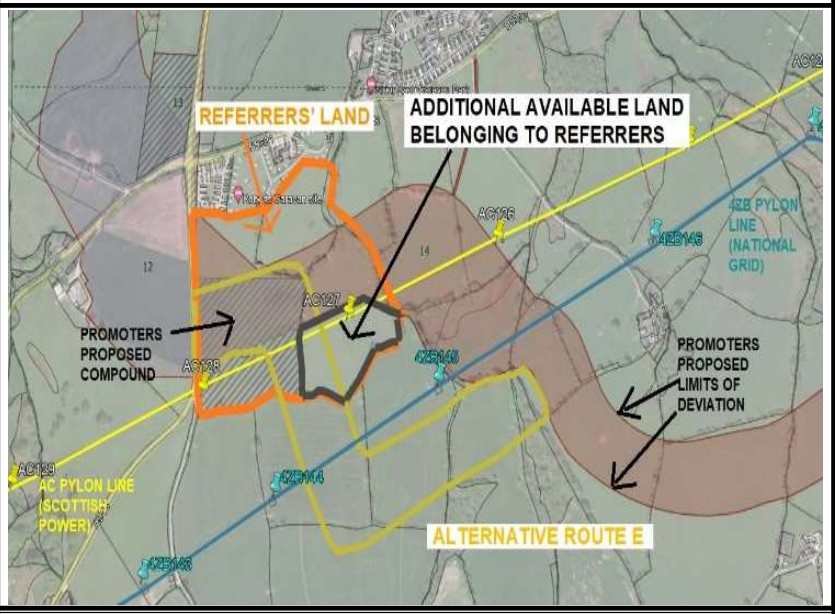
ALTERNATIVES TO CURRENT PROPOSALS ON PLOTS 06-102 TO 06-105 FOR MONA OFFSHORE WIND POWER TRANSMITTAL

	ALTERNATIVE A	ALTERNATIVE B	ALTERNATIVE C
Plan / Markup			
Cat B Mod Quality Hedgerow G63	Can be retained under Alternatives A, B, C, D and E		
Cat B Mod Quality Hedgerow G64	Can be retained under Alternatives A, B, C, D and E		
Cat B Mod Quality Hedgerow H44	Can be retained under Alternatives A, B, C, D and E		
Cat B Mod Quality Hedgerow G66	Can be retained under Alternatives A and B and E		Will be lost but under risk in original proposal as well
Cat B Mod Quality Hedgerow G67	Can be retained under Alternatives A and B and E		Will be lost but under risk in original proposal as well
Cat B Mod Quality Hedgerow G68	Can be retained under Alternatives A and B and E		Will be lost but under risk in original proposal as well
Cat B Mod Quality Hedgerow G69	Can be retained under Alternatives A, B, C, D and E		
Cat B Mod Quality Hedgerow G70	Can be retained under Alternatives A and B and E		Will be lost but under risk in original proposal as well
Cat B Mod Quality Hedgerow G71	Can be retained under Alternatives A and B and E		Will be lost but under risk in original proposal as well
Mod Quality Tree T105	Can be retained under Alternatives A, B, C, D and E		
Mod Quality Tree T106	Can be retained under Alternatives A, B, C, D and E		
Mod Quality Tree T107	Can be retained under Alternatives A, B, C, D and E		
Mod Quality Tree T108	Can be retained under Alternatives A, B, C, D and E		
Mod Quality Tree T109	Regrettably an unnumbered copse of trees and overgrowth adjoining T109 as well as T109 itself could be lost under this option however this can be mitigated by using a trenchless technique beneath the copse without increasing the number of trenchless crossings.		Can be retained
Objectors' View	The Objectors strongly support this alternative solutions A to C and in the event that one of the options was implemented then, subject to reasonable agreement regarding timing and so on, they would be minded, subject to a proper understanding re matters such as timing, to permit the Promoter to use the proposed compound in plot 06-103 to facilitate the scheme. Further and subject to similar agremeent ie re timing, , the Objectors are prepared to permit the use of other adjacent land (edged grey and within their title CYM795223) not currently within the Order area to be used to facilitate this arrangement. In the event that the Promoter was directed or expressly and formally committed to an undertaking to this alternative route and the threat removed from their own land then the Objectors would be minded to fully withdraw their objection to the Order.		

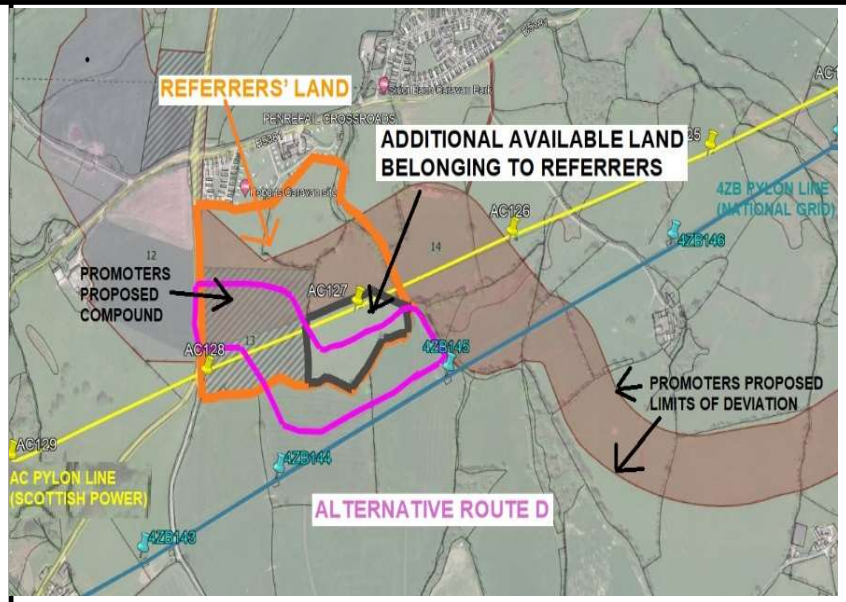
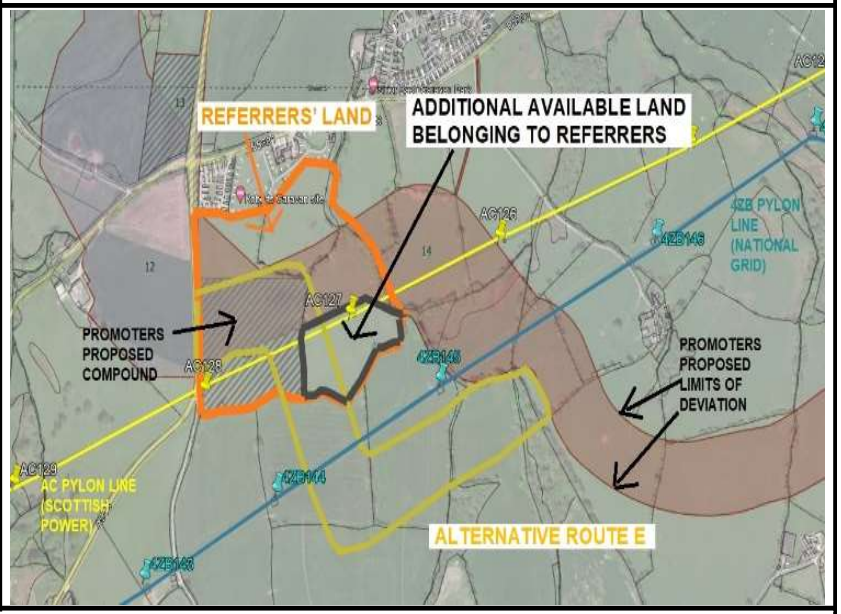
ALTERNATIVES TO CURRENT PROPOSALS ON PLOTS 06-102 TO 06-105 FOR MONA OFFSHORE WIND POWER TRANSMITTAL

	ALTERNATIVE D	ALTERNATIVE E
Plan / Markup		
Description	Alternative D assumes that the narrower 12m wide cable corridor is implemented and that those cables are laid to the most southerly extent of the Objectors' site as possible i.e. as close to the AC line as health and safety guidelines permit. Land registry title Number WA432545 would be unaffected. The route allows for a right angled turn to take the cables to cross the AC line between towers AC128 and AC127. Once the ducts had crossed the AC Line, they could be laid in open trench to rejoin the original alignment in plot 06-106 as for Alternative C. This route will involve land edged grey in title no. title no. CYM795223 (belonging to the Objectors and also a modest amount of land within title number CYM195840. The proposed 100m working corridor is shown along the route and it is edged purple and entitled Alternative Route D on the figure above.	Alternative D assumes that the narrower 12m wide cable corridor is implemented and that those cables are laid to the most southerly extent of the Objectors' site as possible i.e. as close to the AC line as health and safety guidelines permit. Land registry title Number WA432545 would be unaffected. The route allows for a right angled turn to take the cables to cross the AC line between towers AC128 and AC127 and onwards south to cross the 4ZB line between towers 144 and 145 the cables could then be in open trench eastwards to rejoin the original alignment in plot 06-106 as for Alternatives A and B. This route will involve land edged grey in title no. title no. CYM795223 (belonging to the Objectors) and also land within title number CYM195840. The proposed 100m working corridor is shown along the route and it is edged yellow / gold in colour and entitled Alternative Route E on the figure above.
Length of Cabling required to get back on line in Plot 06-106	This route option gives a slightly shorter route by saving @ 178m of cabling over original route from the edge of 06-100 to the meeting point within plot 06-106. This amounts to a saving of 1.19% of cabling over the power transmittal route.	This route option gives a slightly longer route by an additional @ 90m over original route from the edge of 06-100 to the meeting point within plot 06-106. This amounts to an additional 0.6% of cabling over the power transmittal route which is negligible.

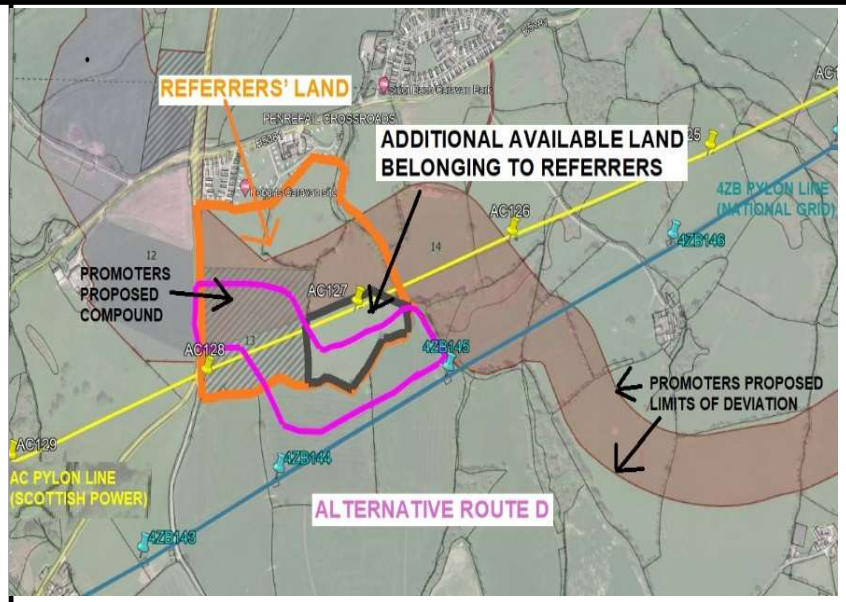
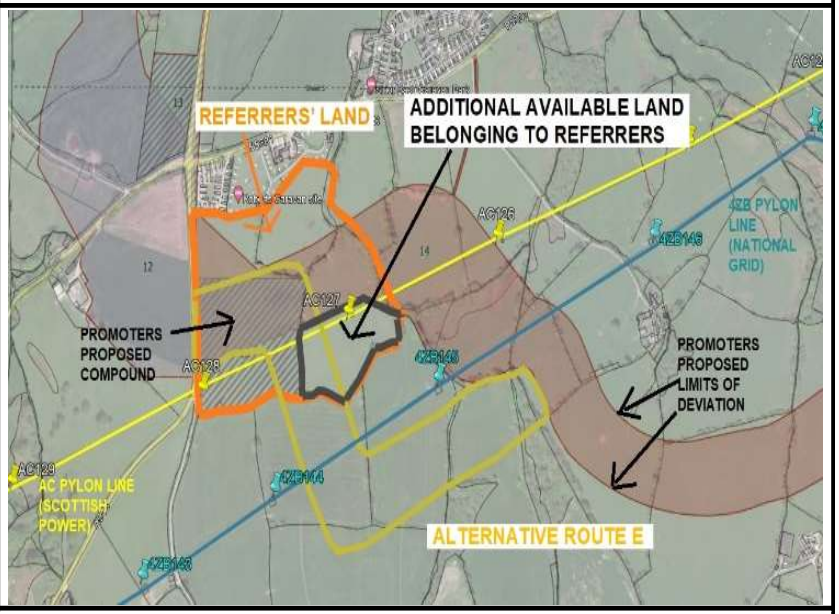
ALTERNATIVES TO CURRENT PROPOSALS ON PLOTS 06-102 TO 06-105 FOR MONA OFFSHORE WIND POWER TRANSMITTAL

			ALTERNATIVE D	ALTERNATIVE E
Plan / Markup				
Topographical levels			This alternative route corridor reaches up to 178m above sea level compared to 168m altitude in plot 06-101 - a negligible difference of only @10M given the route undulations up from sea level in Abergele and back down to Bodelwyddan in any event.	This alternative route corridor reaches up to 180m above sea level compared to 168m altitude in plot 06-101 - a negligible difference of only 10-15M given the route undulations up from sea level in Abergele and back down to Bodelwyddan in any event.
Landownership				
	CYM566178	**Mr L Roberts**	UNAFFECTED - NO CHANGE TO CURRENT POSITION	
	A548	**Conwy Council**	UNAFFECTED - NO CHANGE TO CURRENT POSITION	
	WA432545	**Mr. S Roberts (unrelated)**	UNAFFECTED - NO CHANGE TO CURRENT POSITION	
	Unnamed Road / Track	**Conwy Council**	UNAFFECTED - NO CHANGE TO CURRENT POSITION	
	CYM195840	**Mr. and Mrs. Williams**	Party already affected in plots 06-108 & 07-110 and have indicated that, subject to negotiation, they would be amenable to negotiating for additional land in CYM195840 as well as this land is at the periphery of their holding and the impact could be managed.	

ALTERNATIVES TO CURRENT PROPOSALS ON PLOTS 06-102 TO 06-105 FOR MONA OFFSHORE WIND POWER TRANSMITTAL

			ALTERNATIVE D	ALTERNATIVE E
Plan / Markup				
	CYM683618	**Messrs. Davies**	These landowners are already affected re plot 06-108 and the overall impact on them would be less	
Trench V trenchless Existing Position			The scheme already currently provides for trenchless crossings beneath the A548 (Sections 1.3.2.16 and 1.3.2.22 of the Statement of Reasons) and then again over the water course that runs adjacent to high quality hedgerow G58 and again beneath the same watercourse that runs alongside G63/G64 whilst trenchless is also proposed for crossings beneath the AC and 4ZB pylon lines. These total 5 crossings for the 4 cable circuit ducts totalling i.e. 20 non dig crossings in total.	
Requirements for Trench V trenchless in relevant Alternative			This would require a trenchless crossing over the A548 as for the Promoter's original route into 06-103 and then a trenchless crossing beneath the AC line, again as per the Promoter's original route. In the same way the rest of the route would only require the same number of trenchless crossings as would the Promoter's original proposed route.	
Crossing AC & 4ZB lines			This solution achieves a perpendicular crossing of the pylon lines which is preferred by network operators.	
Biodiversity Implications				
	Cat A High Quality Hedgerow G49		Can be retained under Alternatives A, B, C, D and E	
	Cat A High Quality Hedgerow G50		Can be retained under Alternatives A, B, C, D and E	
	Cat A High Quality Hedgerow G51		Can be retained under Alternatives A, B, C, D and E	
	Cat A High Quality Hedgerow G52		Can be retained under Alternatives A, B, C, D and E	

ALTERNATIVES TO CURRENT PROPOSALS ON PLOTS 06-102 TO 06-105 FOR MONA OFFSHORE WIND POWER TRANSMITTAL

	ALTERNATIVE D	ALTERNATIVE E
Plan / Markup		
Cat A High Quality Hedgerow G53	Can be retained under Alternatives A, B, C, D and E	
Cat A High Quality Hedgerow G54	Can be retained under Alternatives A, B, C, D and E	
Cat A High Quality Hedgerow G55	Can be retained under Alternatives A, B, C, D and E	
Cat A High Quality Hedgerow G58	Can be retained under Alternatives A, B, C, D and E	
Cat A High Quality Hedgerow G59	Can be retained under Alternatives A, B, C, D and E	
Cat B High Quality Hedgerow G60	Can be retained under Alternatives A, B, C, D and E	
Cat B Mod Quality Hedgerow G61	Can be retained under Alternatives A, B, C, D and E	
Cat B Mod Quality Hedgerow G62	Can be retained under Alternatives A, B, C, D and E	
Cat B Mod Quality Hedgerow G63	Can be retained under Alternatives A, B, C, D and E	
Cat B Mod Quality Hedgerow G64	Can be retained under Alternatives A, B, C, D and E	
Cat B Mod Quality Hedgerow H44	Can be retained under Alternatives A, B, C, D and E	
Cat B Mod Quality Hedgerow G66	Will be lost but under risk in original proposal as well	Can be retained under Alternatives A and B and E
Cat B Mod Quality Hedgerow G67	Will be lost but under risk in original proposal as well	Can be retained under Alternatives A and B and E
Cat B Mod Quality Hedgerow G68	Will be lost but under risk in original proposal as well	Can be retained under Alternatives A and B and E
Cat B Mod Quality Hedgerow G69	Can be retained under Alternatives A, B, C, D and E	
Cat B Mod Quality Hedgerow G70	Will be lost but under risk in original proposal as well	Can be retained under Alternatives A and B and E
Cat B Mod Quality Hedgerow G71	Will be lost but under risk in original proposal as well	Can be retained under Alternatives A and B and E

ALTERNATIVES TO CURRENT PROPOSALS ON PLOTS 06-102 TO 06-105 FOR MONA OFFSHORE WIND POWER TRANSMITTAL

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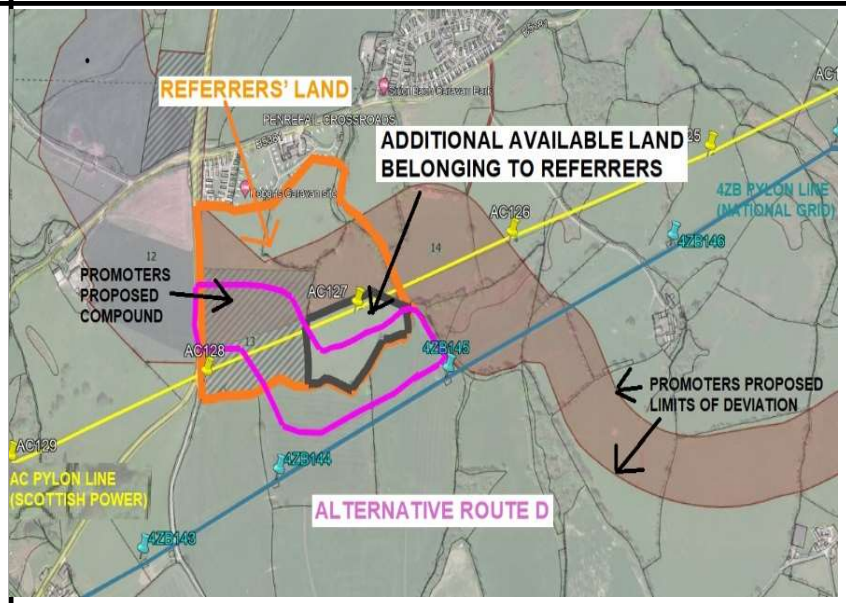
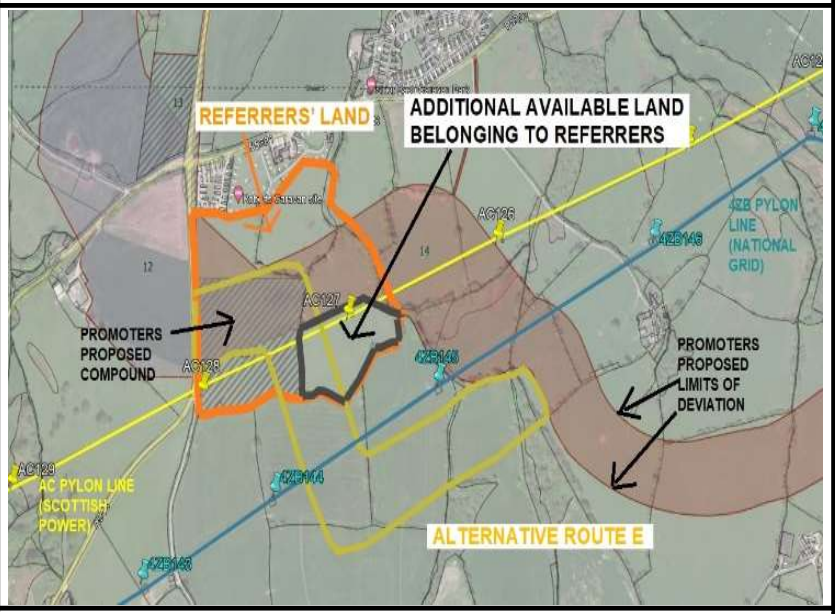
<tr><td>Plan / Markup</td><td> 
</td><td> 
</td></tr>
<tr><td>Mod Quality Tree T105</td><td colspan="2">Can be retained under Alternatives A, B, C, D and E</td></tr>
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<tr><td>Mod Quality Tree T107</td><td colspan="2">Can be retained under Alternatives A, B, C, D and E</td></tr>
<tr><td>Mod Quality Tree T108</td><td colspan="2">Can be retained under Alternatives A, B, C, D and E</td></tr>
<tr><td>Mod Quality Tree T109</td><td>Can be retained</td><td>Regrettably an unnumbered copse of trees and overgrowth adjoining T109 as well as T109 itself could be lost under this option however this can be mitigated by using a trenchless technique beneath the copse without increasing the number of trenchless crossings.</td></tr>
<tr><td>Objectors View</td><td colspan="2">In the event that the narrower 12.75m easement width can be used and that the route is as close to the AC line as possible and Options A, B and C cannot be taken forward then the Objectors are minded to consider supporting Alternatives D or E as a partial solution and in would be prepared to accommodate the Promoter in using a proposed reconfigured temporary compound in plot 06-103 to facilitate the scheme. Further, the Objectors may be minded, subject to proper agreement re matters such as timing to permit the use of other adjacent land (edged grey as well as other land within their title CYM795223) not currently within the Order area to facilitate this arrangement.</td></tr>
</table>

Skip Navigation

CPO and compensation: important changes to planning and CPO law

This article looks at a number of provisions relevant to compulsory acquisition in the Neighbourhood Planning Act 2017 and Housing and Planning Act 2016 that come into force on 6 April 2018.

28 March 2018

On 6 April 2018, important changes are being made to planning and CPO law and practice. The changes were introduced by the Housing and Planning Act (HPA) 2016 and the Neighbourhood Planning Act (NPA) 2017 and are now being brought into play by commencement regulations (SI 2018/251 and SI 2018/252).

Compulsory purchase orders and compensation

The amendments address a number of issues. They are intended to benefit those that are due compensation and to speed up the process of confirmation of compulsory purchase orders. The changes relate to:

- the timetable for the confirmation of CPOs
- the ability for inspectors to confirm CPOs instead of the Secretary of State
- compensation after withdrawal of a notice to treat
- advance payment of CPO compensation.

See amendments that will come into force on 6 April 2018.

Neighbourhood Planning Act 2017 provisions

This article also considers other relevant provisions of the NPA 2017 which were brought in on 22 September 2017 relating to:

- the no scheme principle
- second bite compensation
- confirmation notices
- disturbance compensation
- joint CPOs in London
- the model claim form for those claiming CPO compensation.

These amendments are part of a wider suite of changes that are gradually being phased in and this article notes other elements contained in the NPA 2017 and HPA 2016, which have yet to come into force.

See provisions that were brought in on 22 September 2017.

Which CPO schemes are affected?

The new provisions discussed below come into force on 6 April 2018. The provisions relating to confirmation of CPOs (by inspectors and timetables) will apply to any CPOs submitted for confirmation on or after 6 April 2018, whereas the remaining changes apply to CPOs authorised (i.e. confirmed) on or after that date.

The September 2017 changes in respect of the no scheme principle and disturbance apply to all CPOs authorised on or after that date.

What changes are being brought in on 6 April 2018?

1. Confirmation of CPOs

From 6 April 2018, the HPA 2016 introduces a new section 14B to the Acquisition of Land Act 1981, which requires the Secretary of State to publish a timetable(s) in relation to steps to be taken when confirming a compulsory purchase order.

This provision has already been reflected in a recent update to the MHCLG “Guidance on compulsory purchase and the Crichel Down Rules", which now includes target timescales in relation to confirmation. These targets apply to all confirming authorities other than the Welsh Ministers (who are able to introduce their own timeframes, but have not yet done so).

The targets mean that acquiring authorities must be notified within 10 days of the close of the public inquiry into the CPO of the expected date of the Secretary of State’s decision. Target dates for confirmation of CPOs are also included in the updated guidance. There is a target that 80% of cases should be decided within 20 weeks of the close of the public inquiry – with the remaining cases decided within 24 weeks. However, there is no real sanction for failing to comply with the timescales (other than the shame of being named in a published annual report as having failed to meet the target), and the timescales are not statutory, so it remains to be seen whether they will have the desired effect of speeding up the CPO process.

In addition, the Secretary of State will (from 6 April) be able to appoint an inspector to act on its behalf in relation to the confirmation of a CPO for which there are remaining objectors. An inspector can perform the same functions as the confirming authority including holding a public inquiry. Again, this is a step intended to speed up the process and impacts the timetables set out in the guidance, which states that where confirmation has been delegated to an Inspector, 80% of cases should be decided within 8 weeks – with the remainder being determined within 12 weeks.

If these timeframes are followed, there is real potential (particularly with delegated confirmation) to speed up the CPO process and provide certainty to all those involved in the process. This could have great benefits for acquiring authorities and enable development to be brought forward more quickly.

However, the targets are ambitious and there is no real way of enforcing them so it remains to be seen how effective they will be.

2. Claims for CPO compensation

The HPA 2016 allows further regulations to be made in relation to the specific information that must be provided by a claimant when giving notice of a claim for compensation following CPO. We are yet to see what these changes will be, although there is now in place a model claim form, which claimants are encouraged to use to assist in complying with the requirement to make a properly evidenced claim.

New provisions are also being introduced to enable a successor in title to the claimant to claim compensation for loss or expenses caused by the giving and withdrawal of a notice to treat for the compulsory acquisition of land.

3. Advance payments of CPO compensation

An acquiring authority may make an advance payment of compensation following the exercise of compulsory acquisition powers if a request is made by a claimant. The amount payable is 90% of the agreed sum for compensation or 90% of the acquiring authority's estimate of the compensation due, if possession is taken before compensation has been agreed. A model claim form is available, which claimants are strongly advised to use when making a claim for advance payment.

Under the current position, advance payments must be made within three months from the date of request or when possession is taken (if later). However, under this regime there is no penalty for late payment and no timescale for addressing an acquiring authority's request for further particulars of the claim. These provisions have therefore been subject to calls for reform for some time.

Under the new provisions, an acquiring authority must, within 28 days of receiving a request for an advance payment, decide whether or not it has enough information to estimate the amount of compensation payable. If the acquiring authority needs more information, it must then require the claimant to provide it.

Payment of advance payments must be made by the date of service of a notice of entry or GVD – or within two months of a request from a claimant (if later). This means that a claimant can obtain payment more quickly and – most importantly – before possession is taken. This will be of significance to claimants as the need for compensation often arises prior to possession being taken, particularly for issues such as relocation of a business.

It is worth noting that a claimant will be required to repay any advance payment made prior to possession being taken, if possession is not subsequently taken.

The changes also enable a penalty rate of interest to be applied to any late payment but this rate has not yet been set (there has been rumour of around 8% above base rate) and the MHCLG confirmed on 28 February 2018 that it wishes to engage further with stakeholders to discuss "potential gaming risks" associated with this approach so this is still one to watch.

From 6 April 2018, section 38 of the NPA 2017 also makes further technical amendments to the provisions on advance payments and the information requested from the claimant by an acquiring authority.

What changes were brought in on 22 September

2017?

1. The no-scheme principle

These provisions essentially put the assessment of compensation for land taken by compulsory purchase on a statutory footing. They also provided clarity to the no-scheme principle that in determining compensation, any increase or decrease in value caused by the scheme of acquisition should be disregarded.

The new sections (s6A-6E inserted into the LCA 1961) embodied the no-scheme principle and set out the parameters of how the "scheme" is to be approached. These new sections replaced the previous legislation (s6-s9).

The key addition was the extension of the definition of the scheme to allow for specific transport infrastructure projects to be disregarded. The reason for this change was to prevent those owners facing a CPO for, say, a regeneration scheme securing increased compensation for their site when that increased land value could be attributed to a transport scheme, such as a new road which opened up that site for redevelopment.

Acquiring authorities will be looking at these provisions to limit compensation. Claimants will need to be careful to ensure that any pre-existing value, such as a ransom, doesn't fall foul of these changes.

2. Removal of second-bite compensation

Claimants are no longer entitled to claim additional compensation where, within 10 years of the completion of the compulsory purchase by the acquiring authority, a planning decision is made granting consent for additional development on the land. This repealed Part 4 of the LCA 1961. The previous law was considered unnecessary as the prospects of obtaining planning permission in the future should have already been taken into account when assessing compensation as part of the application of the statutory planning assumptions.

3. Time period for confirmation notices

A requirement on acquiring authorities was introduced to serve and publish a confirmation notice within six weeks of a CPO being confirmed (unless a longer period is agreed between the acquiring and confirming authorities). The result of this is that a CPO now becomes operative on the date of the confirmation notice. This triggers the statutory six week period within which any challenge must be made and the three year implementation period. Previously there was no set period for a confirmation notice to be served. The amendment therefore gave those affected by a CPO more certainty.

4. Compensation for disturbance

The new law regularised the assessment of compensation for disturbance for licensees with no interest in land with that for business tenants and lessees with a break clause (via a new section 47 LCA 1973).

Prior to the amendments, those with a minor interest in land may have been entitled to more

compensation than someone with a leasehold interest as, in assessing the compensation entitlement for tenancies, it was assumed that the landlord would terminate the tenant's interest at the first available opportunity.

However, under the new provisions, the prospect of continuation or renewal of the tenancy is to be taken into account. The effect of this is to overcome the decision in Bishopsgate Space Management v London Underground [2004] and place all interests which do not benefit from security of tenure on the same footing.

5. Joint CPOs – GLA and TfL

The Greater London Authority, a Mayoral Development Corporation or Transport for London are now allowed to acquire land authorised by a compulsory purchase order on behalf of each other for a joint project. It is considered by the government that these changes will assist in bringing forward comprehensive developments, particularly for housing. These changes should make the CPO process more efficient and cost effective in such circumstances.

6. Model claim form

As well as bringing into force the above changes, the government also published a model claim form on 22 September with accompanying guidance.

This advises acquiring authorities to send the form to potential claimants at the earliest opportunity and encourages claimants to complete and return it as early as possible. It is not to be treated as a "once and for all" process as the form can be updated or supplemented by correspondence throughout negotiation in the usual way.

The intention is to make it clearer to claimants and acquiring authorities what information and what level of detail should be provided by claimants and to encourage early disclosure and transparency in negotiations.

The claim form is intended to assist a claimant in complying with the statutory requirement to make a detailed and properly evidenced claim. It highlights that, where a reference is made, a claimant risks an award of costs against them if they have not provided the information in time to enable the acquiring authority to make a proper offer.

The indication is that if the model claim form is not used, provided late and either not completed by the claimant or poorly completed, the Tribunal may rely on this as justification to award costs against claimants. It will be important for claimants to use the new forms and for their advisers to ensure it is completed as fully and as early as possible.

Future changes

There are still some important changes to the CPO regime contained within both the NPA 2017 and the HPA 2016 which are not yet operative.

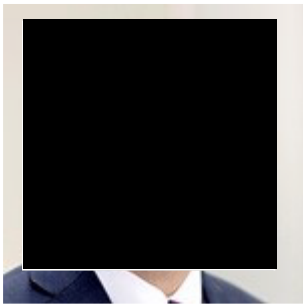
For instance, it is not yet possible to take advantage of the new powers to take temporary possession of land in the NPA 2017. These provisions could prove very useful for acquiring authorities and are long awaited by many. In addition (and as discussed above) a provision in the HPA 2016 concerning a penal rate of interest where advance payments are paid late has not

yet been brought into force. MHCLG intend to consult further on the level of the interest rate to ensure it is fair to both acquiring authorities and claimants.

There is still a lot of detail to be worked through to ensure that these unimplemented provisions work in practice. As such, it is not possible to say with any certainty when we might expect to see the full extent of the amendments to the CPO regime in operation or what their impact will be.

If you have any questions about the above changes or about CPO or compensation more generally, please contact Gary Soloman or Jen Ashwell.

Key contact



Gary Soloman Partner

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- Head of Planning and Compulsory Purchase
- Regeneration and Highways
- Compulsory Purchase and Compensation

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STATUTORY INSTRUMENTS

2010 No. 104

INFRASTRUCTURE PLANNING

The Infrastructure Planning (Compulsory Acquisition) Regulations 2010

Made - - - -	*25th January 2010*
Laid before Parliament	*1st February 2010*
Coming into force - -	*1st March 2010*

The Secretary of State, in exercise of the powers conferred by sections 114(2), 123(4), 127(7)(a), 131(10)(a), 132(10)(a) and 134(7) of the Planning Act 2008(**a**), makes the following Regulations:

Citation and commencement

1. These Regulations may be cited as the Infrastructure Planning (Compulsory Acquisition) Regulations 2010 and shall come into force on 1st March 2010.

Interpretation

2.—(1) In these Regulations—

"the Act" means the Planning Act 2008;

"additional affected person" means a person whose name is notified by the applicant in accordance with regulation 9(a) (certifying compliance with regulations 7 and 8 and notice of additional affected persons;

"additional interested party" means a person who has made a representation, in respect of the proposed provision, which meets the requirements in regulation 10 (relevant representation);

"additional land" means land which it is proposed shall be subject to compulsory acquisition and which was not identified in the book of reference submitted with the application as land;

"address" includes any number or address used for the purposes of electronic transmission:

"affected person" means a person whose name has been given to the Commission in a notice under section 59 (notice of persons interested in land to which compulsory acquisition request relates);

"AONB Conservation Board" means a conservation board established by order under section 86 of the Countryside and Rights of Way Act 2000 (establishment of conservation boards)(**b**);

"applicant" means the person who has made the application;

"application" means the application for an order granting development consent to which the proposed provision relates;

(**a**) 2008 c.29. See section 235(1) for the meaning of "prescribed".

(**b**) 2000 c.37. Section 86 was amended by the Planning and Compulsory Purchase Act 2004 (c.5), sections 118(2), 120, Schedule 7, paragraph 23(a) and (b), Schedule 9 and by the Natural Environment and Rural Communities Act 2006 (c.16), section 105(1), Schedule 11, Part 1 paragraph 164(c).

"book of reference" means the book described in regulation 7 (meaning of "book of reference") of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009;

"closed evidence" means any representation which is subject to a direction under paragraph 2(6) of Schedule 3 to the Act;

"compulsory acquisition hearing" means a hearing held under section 92(3) (compulsory acquisition hearings);

"compulsory acquisition request" means a request for an order granting development consent to authorise compulsory acquisition of land or of an interest in or right over land;

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but in electronic form;

"Examining authority" means—

(a) the Panel or single Commissioner appointed to examine the application or specified matters under section 65 (appointment of members, and lead member, of Panel) or section 79 (appointment of single Commissioner) and includes one or more members of the Panel allocated a function of the Panel in accordance with section 76 (allocation within Panel of Panel's functions); or

(b) the Secretary of State where the Secretary of State has the function of examining the application following a direction under section 112(1) (power of the Secretary of State to intervene) and includes any person appointed by the Secretary of State to act on the Secretary of State's behalf;

"fire and rescue authority" has the same meaning as in section 1 of the Fire and Rescue Services Act 2004 (fire and rescue authorities)(**a**);

"the Homes and Communities Agency" means the body established by section 1 of the Housing and Regeneration Act 2008 (establishment and constitution)(**b**);

"Integrated Transport Authority" has the same meaning as in section 77 of the Local Transport Act 2008 (change of name of passenger transport authorities and PTAs)(**c**);

"interested party", in relation to an application, means a person who is an interested party for the purposes of Chapter 4 of Part 6 of the Act(**d**);

"internal drainage board" has the same meaning as in section 1 of the Land Drainage Act 1991 (internal drainage districts and boards) (**e**);

"issue-specific hearing" means a hearing under section 91 (hearings about specific issues);

"land" has the same meaning as in section 159;

"local resilience forum" has the same meaning as in regulation 4 of the Civil Contingencies Act 2004 (Contingency Planning) Regulations 2005(**f**);

"marine area" means–

(a) waters in or adjacent to England up to the seaward limits of the territorial sea;

(b) an exclusive economic zone, except any part of an exclusive economic zone in relation to which the Scottish Ministers have functions;

(c) a Renewable Energy Zone, except any part of a Renewable Energy Zone in relation to which the Scottish Ministers have functions;

(**a**) 2004 c.21. Section 1 was amended by the Civil Contingencies Act 2004 (c.36), section 31(1), Schedule 2, Part 1, paragraph 10(1),(2).
(**b**) 2008 c.17.
(**c**) 2008 c.26.
(**d**) See section 102 of the Act, (interpretation of Chapter 4: "interested party" and other expressions)
(**e**) 1991 c.59.
(**f**) S.I. 2005/2042.

(d) an area designated under section 1(7) of the Continental Shelf Act 1964(**a**), except any part of that area which is within a part of an exclusive economic zone or Renewable Energy Zone in relation to which the Scottish ministers have functions;

"Natural England" means the body established by section 1 of the Natural Environment and Rural Communities Act 2006 (constitution)(**b**);

"open-floor hearing" means a hearing under section 93 (open-floor hearings);

"Panel" means the Panel appointed under section 65 (appointment of members, and lead member, of Panel) to handle the application;

"police authority" means an authority established under section 3 of the Police Act 1996 (establishment of police authorities)(**c**);

"proposed provision" means a compulsory acquisition request in respect of additional land;

"Regional Development Agency" means a regional development agency established under section 1 of the Regional Development Agencies Act 1998 (establishment)(**d**);

"Regional Planning Body" means a body recognised by the Secretary of State under section 2 of the Planning and Compulsory Purchase Act 2004 (regional planning bodies)(**e**);

"registration form" means the form prescribed in the Infrastructure Planning (Interested Party) Regulations 2010(**f**);

"relevant Northern Ireland Department" means the Northern Ireland Department responsible for the matter to which an application or proposed application relates (if more than one department is responsible, the reference is to all of them);

"relevant representation" has the same meaning as in section 102(4) (interpretation of Chapter 4 of Part 6);

"Renewable Energy Zone" means zones designated under section 84 of the Energy Act 2004 (exploitation of areas outside the territorial sea for energy production)(**g**);

"representation" includes evidence and references to the making of a representation include the giving of evidence;

"single Commissioner" means the Commissioner appointed under section 79 (appointment of single Commissioner) to handle the application;

"specified matters", in relation to an application, means the matters specified in relation to that application in the Secretary of State's direction under section 113(3)(a) (effect of intervention);

"Strategic Health Authority" means an authority established under section 13 of the National Health Services Act 2006 (strategic health authorities)(**h**);

"statutory undertaker" has the same meaning as in section 127;

"Trinity House" means the Corporation of Trinity House of Deptford Strond; and

"written representation" means the full particulars of the case which a person puts forward in respect of an application or the proposed provision and includes any supporting evidence or documents.

(2) Any reference in these Regulations to a section by number is a reference to a section so numbered of the Act.

(**a**) 1964 c.29. Sub-section 1(7) was amended by the Oil and Gas (Enterprise) Act 1982 (c.23), section 37, Schedule 3, paragraph 1.
(**b**) 2006 c.16.
(**c**) 1996 c.16.
(**d**) 1998 c.45.
(**e**) 2004 c.5.
(**f**) S.I. 2010/ 102
(**g**) 2004 c.20.
(**h**) 2006 c.41.

Prescribed forms in connection with authorisation of compulsory acquisition

3. The prescribed form in relation to a notice of a description mentioned below is—

(a) for a notice under section 127(7) (statutory undertakers' land), Form A in Schedule 1 to these Regulations;

(b) for a notice under section 131(10)(a) or 132(10)(a) (commons open spaces etc, compulsory acquisition of land and rights over land) Form B in Schedule 1 to these Regulations; and

(c) for a notice under section 134(7) (notice of authorisation of compulsory acquisition), Form C in Schedule 1 to these Regulations.

Prescribed procedure for compulsory acquisition of additional land

4. Regulations 5 to 19 prescribe the procedure for the purposes of the condition in subsection (4) of section 123 (land to which authorisation of compulsory acquisition can relate) and apply where—

(a) it is proposed to include in an order granting development consent a provision authorising the compulsory acquisition of additional land; and

(b) a person with an interest in the additional land does not consent to the inclusion of the provision.

Proposed provision

5. The applicant must send to the Commission details of the proposed provision which must—

(a) be in the form of a book of reference or, where a book of reference has been submitted to the Commission, a supplement to that book;

(b) be accompanied by—

(i) a land plan identifying the land required as additional land, or affected by the proposed provision; and

(ii) a statement of reasons as to why the additional land is required and a statement to indicate how an order that contains the authorisation of the compulsory acquisition of the additional land is proposed to be funded.

Acceptance of proposed provision

6.—(1) The Commission must, by the end of the period of 28 days beginning with the day after the day on which it receives details of the proposed provision, decide whether or not to accept the proposed provision as part of the application.

(2) The Commission may only accept a proposed provision if the Commission is satisfied that it complies with the requirements of regulation 5.

Notice of proposed provision

7.—(1) The applicant must give notice of the proposed provision to—

(a) each authority which, in relation to the proposed provision, is a relevant local authority within the meaning given by section 102(5);

(b) the Greater London Authority if the land to which the proposed provision relates, or any part of it, is in Greater London;

(c) each person who is within one or more of the categories set out in section 57; and

(d) each person listed in Column 1 of Schedule 2 in the circumstances described in Column 2 of that Schedule.

(2) The notice referred to in paragraph (1) must contain the following—

(a) the name and address of the applicant;

(b) a statement to the effect that an application for an order granting development consent has been made to the Commission, that the Commission has accepted the application, and the reference number applied to that application by the Commission;

(c) details of the application, or specified matters, to which the proposed provision relates;

(d) a description of the additional land**;**

(e) a map showing the location of the additional land;

(f) a statement of reasons as to why the additional land is required;

(g) a statement indicating how the order that contains the authorisation of the compulsory acquisition of the additional land is proposed to be funded;

(h) a statement that a copy of the proposed provision, the map, the revised draft order and any information submitted with the proposed provision are available for inspection free of charge at the places (including at least one address in the vicinity of the additional land) and the times set out in the notice;

(i) the latest date on which those documents will be available for inspection (being a date not earlier than the deadline under paragraph (l));

(j) a statement as to whether a charge will be made for copies of any of the documents and, if so, the amount of any charge;

(k) details of how representations (giving notice of the person's interest in, or objection to, the proposed provision) can be made, a statement that such representations must be made on a registration form, and the address to which such representations may be sent; and

(l) the deadline for receipt of those representations by the Commission, which must not be earlier than the end of a period of at least 28 days beginning with the day after the day on which the person receives the notice.

Duty to publicise proposed provision

8.—(1) The applicant must publish a notice of the proposed provision—

(a) for at least two successive weeks in one or more local newspapers circulating in the vicinity of the additional land;

(b) once in a national newspaper;

(c) once in the London Gazette and, if land in Scotland is affected, the Edinburgh Gazette; and

(d) where the proposed provision relates to offshore development—

(i) once in Lloyd's List; and

(ii) once in an appropriate fishing trade journal.

(2) The notice referred to in paragraph (1) must contain the following—

(a) the name and address of the applicant;

(b) a statement to the effect that an application for an order granting development consent has been made to the Commission, that the Commission has accepted the application and giving details of its the case reference number;

(c) a summary of the application, or specified matters, to which the proposed provision relates;

(d) a description of the additional land;

(e) a summary of the statement of reasons as to why the additional land is required;

(f) a statement that a copy of the proposed provision, the map, the revised draft order and any information submitted with the proposed provision are available for inspection free of charge at the places (including at least one address in the vicinity of the additional land) and the times set out in the notice;

(g) the latest date on which those documents will be available for inspection (being a date not earlier than the deadline under paragraph (j));

(h) a statement as to whether a charge will be made for copies of any of the documents and if so the amount of any charge;

(i) details of how representations (giving notice of the person's interest in, or objection to, the proposed provision) can be made, a statement that such representations must be made on a registration form, and the address to which such representations may be sent; and

(j) a deadline for receipt of those representations by the Commission, which must not be earlier that the end of a period of at least 28 days beginning with the day after the day on which the notice is last published.

Certifying compliance with regulations 7 and 8 and notice of additional affected persons

9. Within the period of 10 working days immediately following the deadline set under regulation 7(2), the applicant must send to the Commission—

(a) a notice in the form set out in Schedule 3 of the persons who the applicant, after making diligent inquiry, knows are interested in the additional land or any part of that land; and

(b) the certificate of compliance in the form set out in Schedule 4.

Relevant representations

10. Any representation made in response to a notice under regulation 7(1) must be treated as a relevant representation if—

(a) it relates to the proposed provision;

(b) it complies with the regulation 4 of the Infrastructure Planning (Interested Parties) Regulations 2010(**a**) as to the form and content of relevant representations;

(c) it is received by the Commission no later than the deadline specified in the notice under regulation 7(1); and

(d) it does not contain—

(i) material about compensation for compulsory acquisition of land;

(ii) material about the merits of policy set out in a national policy statement; or

(iii) material that is vexatious or frivolous.

Initial assessment of issues and meeting

11.—(1) The Examining authority must make an initial assessment of the issues arising in connection with the proposed provision within 21 days of the deadline specified in the notice under regulation 7(2).

(2) After making that assessment the Examining authority may hold a meeting to discuss how the proposed provision should be examined.

(3) The Examining authority must invite to any meeting—

(a) the applicant;

(b) each additional affected person;

(c) each additional interested party; and

(d) each interested party.

(4) The Examining authority shall preside at the meeting and shall determine—

(a) the procedure at that meeting;

(**a**) S.I. 2010/102

(b) the matters to be discussed; and

(c) the amount of time to be allocated to each matter and allowed for making any oral representations.

(5) As soon as practicable after the end of any meeting the Examining authority must prepare a note of the proceedings at that meeting; and make the note available to all additional affected persons, additional interested parties and interested parties and anyone who attended the meeting.

(6) The Examining authority may hold more than one meeting.

Timetable

12.—(1) At the meeting referred to regulation 11 if one is held, or as soon as practicable after the end of that meeting, the Examining authority must set the timetable for its examination of the proposed provision, specifying in the timetable—

(a) the date by which written representations about the proposed provision must be received by the Examining authority;

(b) the period within which the Examining authority will ask questions in writing and seek further information about—

(i) any matter contained in the proposed provision;

(ii) any written representation relating to the proposed provision; and

(iii) any other matter it considers relevant to its examination of the proposed provision;

(c) the period within which the applicant will have the opportunity to comment in writing on—

(i) any relevant or written representation relating to the proposed provision; and

(ii) any responses to written questions received from an additional interested party, interested party or others;

(d) the period within which any additional affected person, additional interested party or interested party will have the opportunity to comment on—

(i) any relevant or written representation relating to the proposed provision; and

(ii) any responses to written questions received from an additional interested party, interested party or others;

(e) the date by which any additional affected person must notify the Examining authority of their wish to be heard an a compulsory acquisition hearing; and

(f) such other deadlines as the Examining authority considers necessary.

(2) The Examining authority must send the timetable all additional affected persons, additional interested parties, interested parties and any other person it has invited to any meeting.

(3) The Examining authority may subsequently vary the timetable; and as soon as practicable after doing so must notify of the variation all additional affected persons, additional interested parties, interested parties and any other person it has invited to any meeting.

Written representations about the proposed provision

13.—(1) An additional affected person, additional interested party, or interested party must ensure that any written representation that party may wish to make about the proposed provision is received by the Examining authority by the date specified in the timetable set under regulation 12, or otherwise under this rule, by the Examining authority.

(2) The Examining authority may at any time specify the date (being a date not earlier than the end of a period of 21 days) by which a written representation to be submitted from the applicant or an additional affected person must be received by the Examining authority.

(3) Any additional affected person, additional interested party, or interested party, who submits a written representation, must identify in their written representation those parts of the proposed

provision with which they agree and those parts with which they do not agree and must state the reasons for such disagreement.

(4) The Examining authority must provide all additional affected persons and interested parties with the opportunity to comment on any written representations, responses and further information received by it.

(5) The Examining authority may in writing request—

(a) a specified number of additional copies of any representation;

(b) responses to questions posed by the Examining authority about the matters contained in any representation; and

(c) such further information about the matters contained in any representation as the Examining authority may specify;

and shall specify the date by which these must be received by it

(6) A person who receives a request in accordance with paragraph (5) must ensure that the additional copies, responses to written questions or further information are received by the Examining authority by the date specified.

(7) The Examining authority may disregard any written representations, responses or information received after the date specified for their receipt.

(8) The Examining authority must make all written representations, responses to written questions and further information received by it available in accordance with rule 15 as soon as is practicable.

Hearings about specific issues

14.—(1) As soon as practicable after receipt of the notice referred to in regulation 9(a), the Examining authority must notify each additional affected person and each additional interested party, of the date, time and place fixed for any issue specific-hearing.

(2) Where the issue-specific hearing has already taken place, the Examining authority must arrange another and notify each additional affected person, each additional interested party, and each interested party of the date, time and place fixed for the further issue-specific hearing.

(3) If an issue-specific hearing has already been arranged but there is insufficient time for the Examining authority to give each additional affected person and each additional interested party 21 days' notice of the date, time and place fixed for the issue-specific hearing, the Examining authority must rearrange it unless each additional affected person, each additional interested party and each interested party agree in writing that it should take place on the original date.

(4) Except as mentioned in paragraph (3), the Examining authority must ensure that at least 21 days' notice is given of any issue-specific hearing to each additional affected person, each additional interested party, and each interested party.

Compulsory acquisition hearing

15.—(1) As soon as practicable after receipt of the notice referred to in regulation 9(a), the Examining authority must notify each additional affected person of—

(a) the deadline by which that person must notify the Commission of the person's wish to be heard at a compulsory acquisition hearing; and the deadline must be not less than 21 days after the date of the notification; and

(b) the date, time and place fixed for a compulsory acquisition hearing.

(2) If an additional affected person notifies the Commission of a wish to be heard at a compulsory acquisition hearing and such a hearing has already taken place, the Examining authority must arrange another and notify the applicant, each affected person and each additional affected person of the date, time and place fixed for the further compulsory acquisition hearing.

(3) If a compulsory acquisition hearing has already been arranged but there is insufficient time for the Examining authority to give each additional affected person 21 days' notice of the date,

time and place fixed for the compulsory acquisition hearing, the Examining authority must rearrange it unless each additional affected person and each affected person agrees in writing that it should take place on the original date.

(4) Except as mentioned in paragraph (3), the Examining authority must ensure that at least 21 days' notice is given by it of any hearing to each additional affected person and each affected person.

Open-floor

16.—(1) As soon as practicable after receipt of the notice referred to in regulation 9(a), the Examining authority must notify each additional affected person and each additional interested party of—

(a) the deadline by which that person must notify the Commission of the person's wish to be heard at a open-floor hearing; and the deadline must be not less than 21 days after the date of the notification; and

(b) the date, time and place fixed for any open-floor hearing..

(2) If the open-floor has already taken place the Examining authority must arrange another and notify each additional affected person, each additional interested party and each interested party of the date, time and place fixed for the further open-floor.

(3) If an open-floor has already been arranged but there is insufficient time for the Examining authority to give each additional affected person, each additional interested party and each interested party 21 days' notice of the date, time and place fixed for the open-floor, the Examining authority must rearrange it unless each additional affected person, each additional interested party and each interested party agrees in writing that it should take place on the original date.

(4) Except as mentioned in paragraph (3), the Examining authority must ensure that at least 21 days' notice is given of any hearing to each additional affected person, each additional interested party, and each interested party.

Availability and inspection of documents

17.—(1) Representations or documents must be made available by the Commission to additional affected persons, additional interested parties and interested parties and to anyone who requests an opportunity to inspect and take copies of them.

(2) A representation or document shall be taken to be available where additional affected persons, additional interested parties and interested parties are notified of—

(a) publication of the representation or document on a website;

(b) the address of the website;

(c) the place on the website where the representation or document may be accessed, and how it may be accessed;

(d) details of where and when copies of representations or documents may be inspected;

(e) details of where and when representations or documents may be copied; and

(f) whether a charge will be made for copying any of the documents available for inspection and, if so, the amount of any charge.

(3) Where the applicant, additional affected person, additional interested party, or interested party is under an obligation to afford to any person who so requests an opportunity to inspect and take copies of any representation or document, the opportunity shall be taken to have been afforded where the person is notified of—

(a) publication of the representation or document on a website;

(b) the address of the website;

(c) the place on the website where the representation or document may be accessed, and how it may be accessed;

(d) details of where and when copies of the representation or document may be inspected;

(e) details of where and when any representation or document may be copied; and

(f) whether a charge will be made for copying any of the documents available for inspection and, if so, the amount of any charge.

(4) In this regulation—

(a) "document" means any notice, report or other document required or authorised to be sent or prepared under these Regulations or under the Act;

(b) "representation" means a relevant representation or a written representation.

Service of notices etc.

18.—(1) Where under any provision of these Regulations, a person is required to notify another person or body of something, that notification must be in writing.

(2) Any representation, notice or other document required or authorised to be sent under any provision of these Regulations may be sent—

(a) by sending it by post; addressed to that person at that person's usual or last known place of abode, or in a case where an address for service has been give by that person, at that address;

(b) by sending it in a prepaid registered letter, or by recorded delivery service address to that person at that person's usual or last known place of abode, or in a case where an address for service has been give by that person, at that address; or

(c) subject to paragraphs (3) to (6), by electronic transmission to such address as may for the time being be specified by the person for that purpose.

(3) Where a representation, notice or other document required to be sent for any purpose of these Regulations is sent by electronic transmission, the requirement shall be taken to be fulfilled where the recipient of the representation, notice or other document has consented, either in writing or by electronic transmission, to the use of electronic transmission for that purpose.

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

(5) A person may revoke their consent to the use of electronic transmission for any purpose of these Regulations by giving notice to that effect, in writing or by electronic transmission, specifying the purpose for which electronic transmission may not be used and the date on which the revocation is to take effect, being not less than 7 days after the date on which the notice is given.

(6) A revocation under paragraph (5) shall take effect on the date specified in the notice.

Allowing further time

19. The Commission or the Examining authority may at any time and in any particular case allow further time for the taking of any step which must or may be taken by virtue of these Regulations.

Closed evidence not to be disclosed

20.—(1) Nothing in these Regulations shall be taken to require or permit closed evidence to be disclosed to a person other than—

(a) the Secretary of State;

(b) any party; or

(c) a person of any description specified in a direction under paragraph 2(6) of Schedule 3 to the Act.

(2) In this Regulation—

(a) "party" means—

(b) the person making a request for a direction under paragraph 2(6) of Schedule 3 to the Act; or

(c) any appointed representative appointed under paragraph 4(2) of Schedule 3 to the Act;

(d) "appointed representative" means a person appointed under paragraph 4(2) of Schedule 3 to the Act.

Signed by authority of the Secretary of State for Communities and local Government

Ian Austin
Parliamentary Under Secretary of State
25th January 2010 Department for Communities and Local Government

SCHEDULE 1

Regulation 3

Form A

NOTICE UNDER SECTION 127(7) OF THE PLANNING ACT 2008

[THE *(a)* DEVELOPMENT CONSENT ORDER]

The above order, which was made on the [*(b)*] by the [Infrastructure Planning Commission] [Secretary of State for *(c)*] *(d),* includes provision authorising the compulsory acquisition of [land] [and] [the new rights] *(d)* described in the Schedule.

[This land] [The land over which the new rights are to be acquired] *(d)* was acquired by *(e)* for the purposes of their undertaking and the Secretary of State is satisfied that [it is used] [an interest in it is held] *(d)* for the purposes of carrying out their undertaking.

The Secretary of State for [*(c)*], in exercise of powers under section [127(2)] [127(5)] *(d)* of the Planning Act 2008, has certified that the Secretary of State is satisfied that the nature and situation of the land in question are such that

[it can be purchased and not replaced without serious detriment to the carrying on of the undertaking.]

[it can be replaced by other land belonging to, or available for acquisition by, the undertakers without serious detriment to the carrying on of the undertaking.] *(d)*

The certificate becomes operative on *(b)*.

SCHEDULE

(f)

[date and signature]

Notes

(a) Insert the title of the order and the year it is made

(b) Insert the relevant date

(c) Insert title of Secretary of State

(d) Delete material which is inapplicable

(e) Insert the name of the authority

(f) Insert a description of all the land (and/or new rights, if any) comprised in the order. This need not repeat anything said in the order itself, but must be in terms which enable interested persons to readily understand how their land is affected. If the details of the new rights are lengthy a suitable summary can be included.

Form B

NOTICE OF SECRETARY OF STATE'S CERTIFICATE UNDER SECTION 131(10) OR 132(10) OF THE PLANNING ACT 2008

[*(a)*

The above application, which has been submitted to the Infrastructure Planning Commission by *(b)*, seeks an order granting development consent which authorises the compulsory acquisition of [land] [a right over land] *(c)* forming part of [a common] [an open space] [a fuel or field garden allotment] [by the creation of a new right over that land] *(c)*. [The land] [and] [the rights] [is] [are] *(c)* described in the Schedule [1] *(c)* to this notice.

Such an order must be subject to special parliamentary procedure unless the Secretary of State issues a certificate in accordance with section [131(3)(b)] [132(2)(b)] *(c)* of the Planning Act 2008 ('the Act'). The Secretary of State for [*(d)*] in exercise of powers under section [131(3)(b)] [132(2)(b)] *(c)* of the Act, has certified that the Secretary of State is satisfied that

[replacement land has been or will be given in exchange for the order land, and, the replacement land has been or will be vested in the prospective seller and subject to the same rights, trusts and incidents as attach to the order land.]

[replacement land has been or will be given in exchange for the order right, and, the replacement land has been or will be vested in the persons in whom the order land is vested and subject to the same rights, trusts and incidents as attach to the order land (ignoring the order granting development consent). The land which has or will be given in exchange is described in Schedule 2 to this notice.]

[the order land does not exceed 200 square metres in extent or is required for the widening or drainage of an existing highway or partly for the widening and partly for the drainage of such a highway, and, the giving in exchange of other land is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.]

[the order land, when burdened with the order right, will be no less advantageous than it was before to the persons in whom it is vested, other persons, if any, entitled to rights of common or other rights, and the public.]

[the order right is required in connection with the widening or drainage of an existing highway or in connection partly with the widening and partly with the drainage of such a highway] and, the giving of other land in exchange for the order right is unnecessary, whether in the interests of the persons, if any, entitled to rights of common or other rights or in the interests of the public.] *(c)*

The certificate becomes operative on the date on *(g)*.

SCHEDULE [1]
(e)

[SCHEDULE 2] *(c)*
(f)

[Date and signature]

Notes

(a) Insert IPC application reference

(b) Insert the name of the applicant

(c) Delete material which is inapplicable

(d) Insert the title of the relevant Secretary of State

(e) Insert a description of the land and new rights to which the certificate relates. If the details of new rights are lengthy a suitable summary may be included

(f) If land is to be (or has been) given in exchange, this should be described here

(g) Insert the relevant date

Form C

NOTICE OF COMPULSORY ACQUISITION UNDER SECTION 134(7) OF THE PLANNING ACT 2008

[THE *(a)* DEVELOPMENT CONSENT ORDER]

[*(b)*]

NOTICE OF AUTHORISATION OF COMPULSORY ACQUISITION

The above order, made under the Planning Act 2008 by the [Infrastructure Planning Commission] [Secretary of State for *(c)*] *(d)* and published on [*(e)*], includes provision authorising the compulsory acquisition [of land] [existing rights over land] [of a right over land by creating a new right over it] *(d)* as described in the Schedule.

The order includes provision authorising the acquisition for the purpose of [*(f)*].

A copy of the order has been deposited at [*(g)*] and may be inspected at all reasonable hours.

A person aggrieved by the order may challenge the order only in accordance with section 118 of the Planning Act 2008, which stipulates that any proceeding must be brought by filing a claim form for judicial review during the period of 6 weeks beginning with the day on which the order was published (or, if later, the day on which the statement of reasons for making the order is? published).

SCHEDULE

DESCRIPTION OF THE [LAND][EXISTING RIGHTS] [AND][THE NEW RIGHTS] *(d)*

(h)

[Date and signature]

Notes

(a) Insert the title of the order

(b) Where the notice is to be affixed, the notice should be addressed at this point to persons occupying or having an interest in the land in question

(c) Insert the title of the relevant Secretary of State

(d) Delete material which is inapplicable

(e) Insert the date on which the order was published

(f) Insert the purpose of the acquisition

(g) Insert the address at which a copy of the order may be inspected

(h) Insert a description of all the land and/or existing or new rights described in the order. This need not repeat any relevant Schedule to the order itself, but must be in terms which enable the reader to appreciate what is included. If the details of the existing or new rights are lengthy, a summary may be included

SCHEDULE 2

Regulation 7

Table

Table of persons to be notified of the proposed provision

Column 1; Persons	*Column 2; Circumstances when that person must be consulted about a proposed provision.*
The Welsh Ministers	All proposed provisions likely to affect land in Wales
The Scottish Executive	All proposed provisions likely to affect land in Scotland
The relevant Northern Ireland Department	All proposed provisions likely to affect land in Northern Ireland
The relevant Regional Planning Body	All proposed provisions likely to affect land in England and Wales
The Health and Safety Executive	All cases
The relevant Strategic Health Authority	All proposed provisions likely to affect land in England and Wales
The relevant Health Board(**a**)	All proposed provisions likely to affect land in Scotland
Natural England	All proposed provisions likely to affect land in England
The Historic Buildings and Monuments Commission for England	All proposed provisions likely to affect land in England
The relevant fire and rescue authority	All cases
The relevant police authority	All cases
The relevant parish council, or, where the application relates to land in Wales or Scotland the relevant community council	All cases
The Environment Agency	All proposed provisions likely to affect land in England and/or Wales
The Scottish Environment Protection Agency	All proposal provisions likely to affect land in Scotland
The Commission for Architecture and the Built Environment	All proposed provisions likely to affect land in England
The relevant Regional Development Agency	All cases
The Equality and Human Rights Commission	All proposed provisions likely to affect land in England and Wales
The Scottish Human Rights Commission	All proposed provisions likely to affect land in Scotland
The Commission for Sustainable Development	All cases
AONB Conservation Boards	All proposed provisions likely to affect an AONB that is managed by a Conservation Board
Royal Commission on Ancient and Historical Monuments of Wales	All proposed provisions likely to affect the historic environment in Wales
The Countryside Council for Wales	All proposed provisions likely to affect land in Wales
The Homes and Communities Agency	All proposed provisions likely to have an effect on its areas of responsibility

(**a**) For the meaning of Health Board see section 2 of the National Health Service (Scotland) Act 1978 (c.29)

The Joint Nature Conservation Committee	All proposed provisions likely to affect the marine environment
The Commission for Rural Communities	All proposed provisions likely to affect rural communities in England
Scottish Natural Heritage	All proposed provisions likely to affect land in Scotland
The Maritime and Coastguard Agency	All proposed provisions likely to affect the maritime or coastal environment, or the shipping industry
The Marine and Fisheries Agency	All proposed provisions likely to affect the marine area in England and Wales
The Scottish Fisheries Protection Agency	All proposed provisions likely to affect the fisheries industry in Scotland
The Civil Aviation Authority	All proposed provisions relating to airports or which are likely to affect an airport or its current or future operation
The Highways Agency	All proposed provisions likely to affect road or transport operation and/or planning on roads for which the Secretary of State for Transport is the highway authority.
Integrated Transport Authorities (ITAs) and Passenger Transport Executives (PTEs)	All proposed provisions likely to affect transport within, to or from the relevant integrated transport area of the ITA or PTE
The relevant Highway Authority	All proposed provisions likely to have an impact on the road network or the volume of traffic in the vicinity of the proposal
Transport for London	All proposed provisions likely to affect transport within, to or from Greater London
The Rail Passengers Council	All proposed provisions likely to affect rail passenger transport
The Disabled Persons Transport Advisory Committee	All proposed provisions likely to affect access to transport for disabled people
The Coal Authority	All proposed provisions that lie within areas of past, present or future coal mining.
The Office of Rail Regulation and approved operators(**a**)	All proposed provisions likely to affect the rail transport industry
The Gas and Electricity Markets Authority	All proposed provisions likely to affect gas and electricity markets
The Water Services Regulation Authority	All proposed provisions likely to affect the water industry in England and Wales
The Water Industry Commission of Scotland	All proposed provisions likely to affect the water industry in Scotland
The relevant waste regulation authority	All proposed provisions likely to affect waste infrastructure
The relevant internal drainage board	All proposed provisions likely to increase the risk of flooding in that area or where the proposals relate to an area known to be an area of flood risk
The British Waterways Board	All proposed provisions likely to have an impact on inland waterways or land adjacent to inland waterways
Trinity House	All proposed provisions likely to affect

(**a**) For the definition of "approved operators" see section 25 of the Planning Act 2008 (c.29).

	navigation in tidal waters
The Health Protection Agency	All proposed provisions likely to involve chemicals, poisons or radiation which could potentially cause harm to people
The relevant local resilience forum	All cases
Relevant statutory undertakers	All proposed provisions likely to affect their functions as statutory undertakers
The Crown Estate Commissioners	All proposed provisions likely to impact on the Crown Estate
The Forestry Commission	All proposed provisions likely to affect the protection or expansion of forests and woodlands

Note to Table

"relevant" in relation to a body, shall mean the body which has responsibility for the area where the additional land is located.

SCHEDULE 3

Regulation 9(a)

Notice in accordance with regulation 9(a)

Planning Act 2008

The Infrastructure Planning (Compulsory Acquisition) Regulations 2010

Notice under regulation 9(a)

The names, addresses for service and contact details of the additional affected persons are –

EITHER

(a) as described in the supplement to Part 1 of the book of reference (persons within Category 1 set out in section 57(1) of the Planning Act 2008 and persons within Category 2 set out in section 57(2)of that Act): **YES/NO***(i)*.

OR

(b) as described in the supplement to Part 1 of the book of reference (persons within Category 1 set out in section 57(1) of the Planning Act 2008 and persons within Category 2 set out in section 57(2) of that Act), subject to the changes described in documentation attached to this notice: **YES/NO** *(i)*.

OR

(c) as described in the documentation attached to this Notice: **YES/NO** *(i)*

- in relation to the proposed provision to authorise the compulsory acquisition of additional andfor……..……..
……..……
……at the location of /or along the route of *(i)*…….
…….…….
……..……

(Completed certificate to be received by the Infrastructure Planning Commission no later than 10 working days after the deadline date stating the applicant has fulfilled requirement at either (a), (b) and (c) above)

IPC Case Reference No.: …….

Applicant: …….

Signed: ……

On behalf of: …….

Date: …….....

Notes:
(i) Delete material which is inapplicable

(ii) Regulation 7 and 8 require the applicant to have; (a) given notice of an accepted proposed provision to the required persons; (b) made available to the required persons a copy of the proposed provision and accompanying documents and information; and (c) publicised the proposed provision in the prescribed manner.

(iii) Section 57 of the Planning Act 2008 defines a person as being within Categories 1 and 2 as follows:
(1) A person is within Category 1 if the applicant, after making diligent inquiry, knows that the person is an owner, lessee, tenant (whatever the tenancy period) or occupier of the land.
(2) A person is within Category 2 of the applicant, after making diligent inquiry, knows that the person; (a) is interested in the land, or (b) has power to either sell or convey the land or to release the land.

(iv) Regulation 9 requires the applicant to certify to the Commission that the applicant has complied with the requirements of regulations 7 and 8.

(v) The book of reference is defined in regulation 7 of the Infrastructure Planning (Applications: Prescribed Forms and Procedure) Regulations 2009.

SCHEDULE 4

Regulation 9(b)

Certifying compliance with regulations 7 and 8

Planning Act 2008

The Infrastructure Planning (Compulsory Acquisition) Regulations 2010

Certificate under regulation 9(b) certifying compliance with regulations 7 and 8

I certify that, in compliance with the requirements of regulations 7 and 8 of the Infrastructure Planning (Compulsory Acquisition) Regulations 2010–

(a) notice of the proposed provision was given to the required persons identified in accordance with regulation 7;
(b) a copy of the proposed provision and accompanying documents and information was made available to the required persons; and
(c) the proposed provision was published in the required manner

- in relation to the proposed provision to authorise the compulsory acquisition of additional and for……..……..
……..……
……at the location of /or along the route of *(i)*……..
…….…….
……..……
The deadline date for all representations to be received by the Commission under regulations 7 and 8 was…….

(Completed certificate to be received by the Infrastructure Planning Commission no later than 10 working days after the deadline date stating the applicant has fulfilled all the requirements at (a), (b) and (c) above)

IPC Case Reference No.: …….

Applicant: …….

Signed: ……

Name in capitals: ……

Date: …….....

Notes
(i) Delete material which is inapplicable

EXPLANATORY NOTE

(This note is not part of the Regulations)

The Planning Act 2008 ("the Act") establishes the Infrastructure Planning Commission and provides for the granting of development consent for certain types of nationally significant infrastructure projects. Part 6 of the Act sets out the procedure for examining applications for development consent. Part 7 contains provisions in respect of what can be included in an order granting development consent. Among other things, an order granting development consent can authorise the compulsory acquisition of land.

Regulation 3 of these Regulations, and Schedule 1, prescribe the forms that must be used when an order granting development consent authorises the compulsory acquisition of land.

Regulation 4 states that the procedure set out in regulations 5 to 19 is the prescribed procedure for the purposes of subsection (4) of section 123 (land to which authorisation of compulsory purchase can relate). This section specifies that an order granting development consent can only include a provision authorising the compulsory acquisition of land if the decision-maker is satisfied that one of the conditions contained in subsections (2) to (4) is met. The first condition, set out in subsection (2), is that the application for the order included a request for compulsory acquisition of that land to be authorised. The second condition, set out at subsection (3), is that all persons with an interest in that land consent to the inclusion of the provision. The third condition, set out in subsection (4) is that the prescribed procedure has been followed in relation to the land.

Regulation 5 requires the applicant to send to the Commission details of the proposed provision authorising the compulsory acquisition of land. Regulation 6 provides for the Commission to notify the applicant, within 28 days, of whether or not it accepts the proposed provision. Regulation 7 sets out the notice requirements. These include the requirement to serve notice on the persons listed in Column 1 of Schedule 2 in the circumstances described in Column 2. The publicity requirements that apply once a proposed provision has been accepted are set out in regulation 8. Regulation 9 requires the applicant to give to the Commission a notice of additional persons interested in the land in the form set out in Schedule 3 and to send to the Commission a certificate of compliance in the form set out in Schedule 4.

Regulation 10 provides that a response to a notice under regulation 7 is to be treated as a relevant representation.

Regulation 11 requires the Examining Authority to make an initial assessment of the issues raised and provides that it may hold a hearing to consider how the proposed provision should be considered. Regulation 12 states that the Examining Authority must prepare a timetable for its examination of the proposed provision and what this should include. Regulation 13 relates to the making of written representations. Regulations 14, 15 and 16 contain provisions in respect of issue-specific hearings, compulsory acquisition and open-floor hearings (to which sections 92, 93 and 91 of the Act refer). Regulations 17, 18 and 19 contain provisions about the availability and inspection of representations and documents, the service of notices, representations and documents and allowing further time. Regulation 20 limits the disclosure of any representation which is subject to a direction under paragraph 2(6) of Schedule 3 to the 2008 Act ("closed evidence").

An Impact Assessment has not been prepared for these Regulations since the policy options do not have an additional impact on business, charities or the public sector beyond what was examined in the Impact Assessment that accompanied the Planning Bill when it was introduced in Parliament on 27th November 2007. That Impact Assessment can be found on the Communities and Local Government website (http://www.communities.gov.uk).

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2010 No. 104

INFRASTRUCTURE PLANNING

The Infrastructure Planning (Compulsory Acquisition) Regulations 2010

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LAW REFORM: TEMPORARY POSSESSION OF LAND

THE LEGAL IMPLICATIONS

Barry Denyer-Green[1]

Summary

In this paper I examine the legal rules relating to the taking of temporary possession of land by acquiring authorities and other authorised scheme promoters ("statutory undertakers").

This paper examines the legal effect of the exercise of a temporary possession power, whether temporary possession powers should apply to highway scheme, whether certain important primary legislation authorises powers of temporary possession, and problems of compensation entitlement. This examination makes suggestions for some areas of law reform, having regard to a need for certainty and practicality, and also fairness, and thus compliance with human rights.[2]

Law reform

In the field of compulsory acquisition, law reform is necessary where the law is uncertain as to its application, or there are practical difficulties in applying it to the intended purpose. There is also the question as to whether the existing legal rules, in their provision or non-provision for some circumstance, are 'fair'. Although the measurement of fairness is a difficult exercise, there are some essential propositions in the common law that

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[1] Barrister, Falcon Chambers.

[2] The views expressed in this paper are my own, and are not that of the Compulsory Purchase Association. I acknowledge the helpful comments of Paul Astbury on the earlier draft of this paper.

provide useful benchmarks,[3] and the relevant rights under the Convention of European Human Rights have application.[4] Associated with these legal rules, and part of the same set of normative values, is the policy direction in ministerial guidance.[5] I shall refer to these rules and guidance by the generic "the fairness principles".

Background

There are a number of reasons why statutory undertakers may wish to take temporary possession of land in relation to the execution and maintenance of schemes. Apart from land, which will be compulsorily acquired for the permanent features of the scheme, land may also be required temporarily for construction compounds, the construction operations, landscaping, and land regrading, among other possibilities. Whilst temporary possession powers are quite usual in legislation concerned with railway schemes, there seems no reason why in principle such powers should not be available for other types of schemes.

The genesis of the modern compulsory purchase legislation is found in the 1845 legislation concerning railways. The Lands Clauses Consolidation Act 1845 contained powers of compulsory acquisition. In connection with new railways, provision was made in the Railways Clauses Consolidation Act 1845 for powers to take temporary possession of land within certain defined limits and for certain specified purposes, subject to the payment of

[3] The two most significant: (1) parliament does not usually authorise a taking of private property without compensation (*Central Control Board v Cannon Brewery*[1919] AC 744); and (2) the principle of equivalence (as approved in *Director of Buildings and Lands v Shun Fung Ironworks* [1952] 2 AC 111).
[4] S.3, Human Rights Act 1998 and European Convention of Human Rights, Articles 6 and 8, and First Protocol, Article 1.
[5] Para 17, Circular 6/2004.

compensation.[6] However, the exercise of such temporary possession powers, and the provisions relating to the payment of compensation, were subject to a number of requirements and limitations.[7]

Powers of temporary possession are not universally provided for in modern legislation, and where such powers are included, the comprehensive provisions found in the 1845 Act are not present[8]. However, one should start with the presumption that statutory undertakers may require temporary possession powers, depending on the requirements or any particular project or scheme.

The modern legislation

The Transport and Works Act 1992 contains powers to make orders ("T&WOs") in relation to certain transport systems and inland waterways.[9] Schedule 1 to the 1992 Act provides for matters that may be within such orders, including the acquisition of land,[10] and the creation of rights over land,[11] in either case whether compulsorily or by agreement. Although the Act contains no express provisions relating to the temporary possession of land, the Secretary of State has power to prescribe model provisions for incorporation in any draft orders.[12] In respect of railways, the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 makes provision for, inter alia, the temporary use of land for construction works and

[6] Sections 32 and 43.
[7] In certain cases an owner could offer alternative land: sections 35 and 37. An owner could compel the railway undertaker to purchase lands temporarily occupied: see section 42. Compensation for disturbance items are required to be paid within one month of entry and a rental occupation shall be paid half-yearly to the occupier, or to the owner, as the case may require: see section 43.
[8] Railways Clauses Consolidation Act 1845.
[9] Sections 1 and 3.
[10] Para 3, Schedule 1.
[11] Para 4, Schedule 1.

for maintenance of works.[13] The model clause relating to the temporary use of land for construction works provides for a minimum 14-day notice, a limit on the duration and possession of 12 months after completion of the works without agreement, an obligation to pay compensation for any loss or damage arising from the exercise of the powers, that the power of compulsory acquisition of land, conferred by the order, shall not apply in relation to land in respect of which temporary use is authorised, and that a statutory undertaker taking temporary possession shall not be required to acquire the land or any interest in it.[14] However, many confirmed orders provide that, in addition to specifying land in respect of which only temporary possession powers are available, temporary possession can be taken in advance of the compulsory acquisition of land authorised to be taken permanently.[15] Orders frequently provide for time limits within which powers of temporary possession may be exercised that are longer than the one-year, following completion of the works, provided for in the model clauses.[16]

Broadly similar provisions are found in primary legislation relating to railways, such as the Crossrail Act 2008,[17] and the Channel Tunnel Rail Link Act 1996.[18] Although in the latter case the powers to take land temporarily were limited to certain temporary purposes, and there was no power to take land temporarily in advance of its compulsory acquisition. The High Speed

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[12] Section 8.
[13] Article 3, and Schedule, clauses 24-25.
[14] Model clause 24, Schedule 1 to the 2006 Order.
[15] E.g. Nottingham Express Transit System Order 2009 (SI 2009/1300), Mersey Tram (Liverpool City Centre to Kirkby) Order 2005 (SI 2005/120), Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (SI 2004/757) and the Docklands Light Railway (Stratford International Extension) Order 2006 (SI 2006/2905), The Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (SI 2012/2679).
[16] *Ibid*.
[17] Section 5 and Schedule 5.

Rail (London – West Midlands) Bill 2013 contains extensive provisions for the temporary possession and use of land, and such powers will enable temporary possession to be taken of land in advance of its permanent acquisition.[19]

A Development Consent Order ("DCO"), made under the provisions of the Planning Act 2008, may include provisions authorising the compulsory acquisition of land, subject to certain limitations and conditions.[20] The Act makes provision for the matters that may be included in a DCO.[21] Such matters include acquisition powers, the creation of interests in or rights over land, and the payment of compensation.[22] In that connection the Secretary of State may issue guidance about the making of a DCO which includes provisions authorising the compulsory acquisition of land.[23] The issued guidance, relating to procedures for compulsory acquisition, says nothing about the inclusion of provisions for temporary possession.[24] However the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 includes suggested provisions for the temporary use of land for carrying out, or maintaining, the authorised project.[25] These broadly follow the equivalent model clauses for the purposes of a T&WO. However, in respect of certain approved DCOs, the provisions relating to the temporary use of land for carrying out the authorised development include powers to take, not only land of which temporary possession alone may be taken, but also to take

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[18] Section 6 and Schedule 5.
[19] Clause 14 and Schedule 15.
[20] Section 122.
[21] Section 120 and Schedule 5, Part 1.
[22] See paragraphs 1, 2 and 36, Part 1, Schedule 5. But the taking of temporary possession of land is not one of the matters listed.
[23] Section 124 and the Planning Act 2008.
[24] Department for Communities and Local Government, February 2010.
[25] Schedule 1, Model Clauses 28 and 29.

temporary possession in advance of the compulsory acquisition of land authorised to be taken permanently.[26]

As to other general public legislation authorising compulsory acquisition, one does not find express provisions for temporary possession powers. The Highways Act 1980 contains powers to acquire land compulsorily, but says nothing about the temporary possession of land.[27] although the Act does include powers to create rights over land.[28]

Notwithstanding the absence of any express power to take temporary possession of land in connection with the compulsory acquisition of land for highway purposes, highway authorities seek to get round the absence of a temporary possession power in a number of ways.[29]

The powers to compulsorily acquire land under the Town and Country Planning Act 1990 make no express provision for the acquisition of a right to take land for temporary purposes only.[30]

As to the general legislation relating to the making of compulsory purchase orders, the Acquisition of Land Act 1981 provides for the procedure for the authorisation of a CPO, but does not otherwise address the extent of the powers that may be authorised. The Compulsory Purchase Act 1965 and the

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[26] E.g. The Able Marine Energy Park Development Consent Order 2014, Article 40. In the case of the Hinckley Point C (Nuclear Generating Station) Order 2013, the powers to take temporary possession are limited only to the land specified for that purpose: see Article 33.
[27] Sections 239, 240, 241, 242 and 246.
[28] See section 250.
[29] Thus, under the Metropolitan Borough of Stockport (Hazel Grove (A6) to Manchester Airport A555 Classified Road) Compulsory Purchase Order 2013, a number of plots are identified for compulsory acquisition, notwithstanding that the acquiring authority has indicated that the land is only required for temporary purposes only.
[30] See section 226.

Compulsory Purchase (Vesting Declarations) Act 1981 contain procedures for the acquisition of land once a CPO has been confirmed. But neither Act addresses the extent of the powers that may be authorised. The Land Compensation Act 1961 contains the Compensation Code. Whilst it may have application to the determination of compensation for the exercise of temporary possession powers where it is expressly provided for,[31] it falls to be applied where any land is "acquired compulsorily",[32] and compensation is to be assessed in accordance with certain rules "in respect of any compulsory acquisition".[33]

The problems identified

I will examine a number of problems in relation to the temporary possession powers.

(1) What is the legal effect of the exercise of a power of temporary possession.

(2) Whether there should be such powers in connection with highway schemes.

(3) Whether the inclusion of such powers in a T&WO or a DCO is outwith the enabling enactments.

(4) Whether the inclusion of temporary possession powers for the land that may also be permanently acquired can satisfy the fairness principles.

(5) What is meant by the obligation to pay "compensation" where so provided for?

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[31] Eg, para 24(5)-(6), Transport and Works (Model Clauses for Railways and Tramways) Order 2006, as applied in the Chiltern Railways (Bicester to Oxford Improvements) Order 2012, article 29(5)-(6).
[32] S.1.
[33] S.5.

What is the legal effect of the exercise of temporary possession powers?

Entry onto land of another person without consent or legal authority is a trespass.[34] On the exercise of a temporary possession power, notice of that is usually required to be served on the owners and occupiers.[35] No notice to treat is required to be served as the statutory undertaker will not be treating for any interest; it does not need a tenancy, and it will acquire no interest in land. No title is taken or becomes vested. The exercise of a lawful temporary possession power authorises provides the defence of justification for an act that would otherwise be a trespass.[36]

An important consequence, of the exercise of the temporary possession power, is that where the relevant land is subject to a tenancy, the tenancy is not terminated, as might be the case where a notice of entry is served under the Compulsory Purchase Act 1965.[37] The obligations of the landlord and tenant ordinarily continue; the tenant to pay rent, and the landlord to perform any landlord obligations. It is true that the doctrine of frustration is capable of applying to a tenancy, and, if applied, this would excuse the performance of the parties' obligations, but the doctrine's application is both limited and uncertain.[38] In considering whether frustration arises, the terms of the tenancy must be considered, and a comparison made between the likely

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[34] *Unlawful Interference with Land*, Elvin & Karas, 2nd ed, para 1-046.

[35] Eg, para 28(2) of the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009.

[36] Elvin & Karas, *ibid*, para 1-057.

[37] S.22.

[38] Notice of an intended compulsory acquisition of land did not allow a purchaser to invoke the doctrine of frustration, as justification for refusing to complete a purchase, in *E Johnson & Co (Barbados) Ltd v NSR Ltd* [1996] 3 WLR 583, as the seller could still provide vacant possession; in *National Carriers Ltd v Panalpina Northern Ltd* [1981] AC 675 the House of Lords accepted that the doctrine was capable of applying to leases, but the relationship between the length of the term and the duration of the temporary obstruction of the access precluded frustration in that case.

period of temporary possession and the term under the tenancy.[39] In the case, say, of an annual agricultural tenancy, where part only of a holding is the subject of temporary possession, the doctrine is unlikely to apply. But it may apply where the whole or a substantial part of the demise is taken for a period approaching or exceeding the term of the lease.

In the case of orders made under 1992 and 2008 Acts, the model provisions provide that an undertaker may enter and take temporary possession of specified land, for specified purposes, and may remove any buildings and vegetation from that land, and construct temporary works.[40] These powers omit two important safeguards found in the 1845 legislation. First, that an owner may, by counternotice, object on the basis that some other contiguous or nearby land of his would be more fitting for the purpose.[41] Second, that an owner can require the statutory undertaker to purchase land temporarily occupied.[42] There are obvious objections to the inclusion of the first safeguard on the basis that where land is to be taken only for the purpose of the construction activity, it may be impossible to accommodate alternatives, if at all, in the construction design or programme. There is far less objection to the second safeguard in those cases where temporary possession is taken of land, upon which the scheme works are constructed, and which plainly will be permanently acquired at some stage.

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[39] In *National Carriers Ltd v Panalpina Northern Ltd* [1981] AC 675 no frustration arose where a road was closed for 20 months and the lease term was 10 years.
[40] Transport and Works (Model Clauses for Railways and Tramways) Order 2006, Schedule 1, para 24(1) and …
[41] S.35, Railways Clauses Consolidation Act 1845.
[42] S.42, *ibid.*

Whether there should be temporary possession powers for highway schemes

I appreciate that many highway schemes will be subject to DCOs; but there will be schemes outside the scope of the Planning Act 2008. There is very little evidence, other than anecdotal, and my personal experience, as to the need for temporary possession powers in connection with highway schemes. The practical problems of constructing roads and bridges are little different from constructing the equivalent for railways. Space may be required for contractors' compounds and for the erection of structures. Cuttings and embankments may require temporary or permanent spoil heaps and land grading. In the past highway authorities, or their contractors, frequently negotiated for the use of additional land for temporary purposes.[43] That practice is now less common as road contractors have become more involved in furthering the compulsory purchase orders, and seek to avoid the ransom sums that might otherwise be payable.

It is known that the highways authorities, relying on the powers of permanent acquisition under the Highways Act 1980, include land required only temporarily as land to be taken permanently. There are two objections to this. First, that an authority might fail to justify the use of permanent acquisition powers for a temporary purpose only.[44] Second, that it could be compelled to acquire land that it does not require permanently.

[43] Difficult questions of betterment set-off then arose where a claimant-owner obtained a lucrative contract to provide land temporarily.
[44] Para 17, Circular 6/2004 - *compelling case in the public interest*

Subject to the other safeguards considered in this paper, there is no reason why the Highways Act 1980 should not be amended to include a temporary possession power.

Whether temporary possession powers can be lawfully included in T&WO and DCOs?

Both the Transport and Works Act 1992 and the Planning Act 2008 make provision for the subject matter of the respective orders.[45] Whilst the acquisition of land, compulsorily or by agreement, is a matter that may be the subject of the respective orders, the compulsory taking of temporary possession for construction and/or maintenance is not expressly so included. That omission provokes a number of questions.[46]

First, whether the inclusion of a power to take temporary possession in the respective orders falls within the powers of "compulsory acquisition of land". As the 1845 legislation contained powers for both the compulsory acquisition of land, and the taking of temporary possession for certain purposes, that raises the possibility that the legislature distinguishes between those two powers.[47] The prescribed model clauses, relating to the temporary use of land for construction or maintenance of works, require the service of notice before taking temporary possession, and refer neither to a Notice to Treat or

[45] Section 5 of, and Schedule 1 to, the 1992 Act and section 120 of, and Schedule 5, Part 1 to, the 2008 Act.

[46] Some of the points raised in this section may also have resonance in relation to other primary legislation authorising compulsory acquisition.

[47] Section 10 of the Defence Act 1842 authorised the appropriate authorities to treat for the absolute sale of land, or the grant of any lease, or "*for such period as the exigency of the public service shall require*" and for powers of compulsion: see sections 10 and 19. The Emergency Powers (Defence) Act 1939, which provided for the Defence Regulations also made a distinction between the taking of possession of any property and the acquisition of any property (other than land): see section 1(2)(b). Sections 1 and 2 of the Compensation (Defence) Act 1939 makes provision for compensation where possession of any land has been taken, but distinguishes the requisition or acquisition of land: see section 1.

a General Vesting Declaration, to which the provisions of the 1965 or 1981 Acts would otherwise apply, and where such steps either state that land is sought to be acquired, or is vested, respectively. On their terms, no interest is sought to be acquired under the model clauses; what is purported to be authorised is possession only. What is authorised is the taking of temporary possession for specified purposes; it amounts to no more than legal justification for what would otherwise amount to a trespass. The acquisition procedures of the 1965 Act are generally incorporated into T&WO and DCO's. The 1965 Act defines "land" as that defined in the Act authorising the acquisition.[48] Where possession is taken under the model clauses, no interest or title is acquired, and no legal interest or title vests in the undertaker. It therefore seems unlikely that the grant of a power of compulsory acquisition of land can be construed as including a power to take temporary possession of land.

Second, the matters that may be included in the respective orders include the creation of rights over land.[49] Would the temporary possession powers and the model clauses fall within the expression "rights over land"? In each case the model clauses deal separately with the power of temporary possession and the power to acquire new rights; this again rather suggests that the Secretary of State, at least, does not consider that the statutory power to create rights over land includes the right to take temporary possession of land. The meaning of "rights over land" needs to be considered in relation to other primary legislation. The acquisition, by way of the creation of new rights over land, as provided for in the Local Government (Miscellaneous Provisions) Act 1976[50] and the Highways Act 1980[51] is generally understood

[48] S.1(3).
[49] 1992 Act, Schedule 1, para 4 and 2008 Act, Schedule 5, Part 1, para 2.
[50] Section 13.

as providing for the creation of rights in the nature of easements.[52] A right to acquire land does not include a right to acquire, by creation, new rights over land, in the absence of express powers.[53]

Where, rights are compulsorily acquired under the 1976 or 1980 Acts, the 1965 Act applies with modifications, including the requirement to serve a Notice to Treat.[54] Consistently with such arrangements, the model clauses apply the 1965 Act with modifications necessary to make it apply to the compulsory acquisition of a right, by the creation of a new right, as it would apply to the compulsory acquisition of land.[55]

It is therefore difficult to construe the power to acquire a right over land as including a power of temporary possession.

Third, the matters for which the respective orders can make provision include compensation.[56] In the case of the model clauses for T&WO, provision is made simply for the payment of compensation, without any reference to the exercise of any identified power. The existence of a compensation provision in a statute can be relevant to the construction of its provisions relating to the taking of, or the interference with, rights.[57] But, having regard to the

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[51] Section 250.
[52] For the necessity for such a power: see Sovmots Investments Limited v Secretary of State for the Environment [1979] AC 144.
[53] See also Pinchin v London and Blackwall Railway Co (1854) 5 De GM&G 851 and Hill v Midland Railway Co (1882) 21 Ch D 143.
[54] Eg., see s.13(3) of the 1976 Act.
[55] Transport and Works (Model Clauses for Railways and Tramways) Order 2006, Schedule 8, para 3.
[56] The 1992 Act, Schedule 1, para 11 and the 2008 Act, Schedule 5, para 36.
[57] The existence of a compensation obligation, in a manorial custom, a local law, was relevant to the right to let down the surface of land in relation to mining in *Excors of John Hargreaves Ltd v Burnley Corpn* [1936] 3 All ER 959, 968. Although in *New Sharlston Collieries Co Ltd v Westmoreland (Earl)* [1904] 2 Ch 443n HL, the existence of a

extensive list of matters for which orders may make provision, and where any number of them could well give rise to losses or damage for which compensation ought to be provided, the non-specificity of the expression "compensation" is understandable, and does not assist in the extension of matters for which orders may provide, and which are not expressly stated. To put the matter the other way round, the absence of a compensation provision raises the presumption that Parliament does not authorise a taking of or interference with property rights,[58] but its non-specified inclusion does not raise a presumption that any interference with property is authorised. Further, the existence of a non-specific compensation provision would most probably negate a contention of a breach of Convention Rights.

I conclude that the existence of the compensation obligation is helpful in interpreting the enactments as including the power of temporary possession, but is not conclusive.

Fourth, in the case of T&WOs, the Secretary of State has power to prescribe model provisions for incorporation in any draft orders.[59] Is this sufficient authority to prescribe a clause authorising temporary possession? I think that a delegated power is unlikely, on its own, to authorise a compulsory power to interfere with property.

Fifth, whilst subordinate legislation might contain provisions that are not authorised by the enabling legislation, the subordinate legislation retains legal effect until quashed by a judicial act.[60]

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compensation provision in a conveyance was not inconsistent with an obligation not to let down the surface.

[58] *Central Control Board v Cannon Brewery*[1919] AC 744.

[59] Section 8.

[60] See the authorities cited at *de Smith's Judicial Review*, 7th ed, para3-011.

I conclude that there is, at the least, doubt whether orders made under the 1992 and 2008 Acts may include a power to take temporary possession of land; such orders could be vulnerable to judicial challenge.

Taking temporary possession in advance of permanent acquisition

Some T&WO and DCOs authorise temporary possession of land that is also authorised to be taken permanently. This is also intended under the High Speed Rail (London-West Midlands) Bill. Paul Astbury identifies some of the practical difficulties, no early valuation date for assessment of compensation for the permanent acquisition, and no early entitlement to an advance payment under the Land Compensation Act 1973,[61] as would enable relocation. Whilst one can see the financial advantage to the statutory undertaker, in limiting early capital payments, and addressing any uncertainty about the precise limits of the finished scheme, the disadvantages to a claimant could be very significant where deprived of the means to relocate where relocation is inevitable.

Under some of the T&WOs, the temporary possession power is exercisable in respect of land authorised to be permanently required.[62] It appears that the temporary possession power has been used before, and sometimes some considerable time before, any notice to treat is served or a general vesting declaration made. As possession taken under the temporary possession power is not the taking of possession following a notice of entry under section 11 of

[61] S.52.

[62] E.g. Nottingham Express Transit System Order 2009 (SI 2009/1300), Mersey Tram (Liverpool City Centre to Kirkby) Order 2005 (SI 2005/120), Docklands Light Railway (Woolwich Arsenal Extension) Order 2004 (SI 2004/757) and the Docklands Light Railway (Stratford International Extension) Order 2006 (SI 2006/2905), The Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (SI 2012/2679).

the 1965 Act, such a taking of possession does not fix the valuation date, or the liability to pay compensation, under any later notice to treat or GVD. Nor will any obligation to make an advance payment of compensation for the permanent acquisition arise.[63] Indeed, save for any time limit in the enabling power, there appears to be neither a need nor any incentive on a statutory undertaker to serve any notice to treat. The consequences of all this is that the affected owner or occupier, losing possession of land, and denied any advance payment, is left with the uncertainty of not knowing how much land will be permanently required, and is not provided with the financial means to acquire substitute land. The application of the mitigation duty to find substitute land becomes very uncertain, and the compensation obligation on the statutory undertaker will become more onerous.

The potential disadvantages are so significant as to raise a possible breach of Article I of the First Protocol of the European Convention, on the ground of disproportionality, or of Article 8, interference with a home. An inadequate provision for compensation could either result in the legislation being interpreted more favourably to the claimant, and/or an award of compensation,[64] or a declaration of incompatibility.[65] There is the related issue as to whether the inclusion of the temporary possession power will satisfy that part of the fairness principles expressed in ministerial guidance.[66]

It would be preferable to introduce limits on the use of a temporary power of possession in respect of land to be taken permanently. Such limits could

[63] S.52, Land Compensation Act 1973.
[64] Eg, as in *Andrews v Reading BC* [2006] RVR 56, where compensation was awarded under Article 8 of the European Convention.
[65] S.4, Human Rights Act 1998; although the Upper Tribunal (Lands Chamber) may not have jurisdiction to make such a declaration.
[66] Para 17, Circular 6/2004.

either be in terms of time limits or topographical limits. There could be a time limit of 12 months within which a notice to treat is served or a general vesting declaration made.

Compensation

What is meant by the obligation to pay "compensation", where so provided? Under the 1845 legislation the compensation provided that for disturbance items compensation was required to be paid within one month of entry and a rental occupation shall be paid half-yearly to the occupier, or to the owner, as the case may require.[67] The modern legislation goes no further than providing an obligation to pay "compensation … for any loss (or damage)".[68] This formulation of the compensation entitlement is also found in the Town and Country Planning Act 1990,[69] and has been held to include the loss of the profits that were reasonably expected to have been earned from the subject land.[70] Subject to the application of the relevant principles of causation, remoteness and mitigation, the principles for the assessment of compensation for disturbance and other losses under the Compensation Code would seem to apply by analogy.[71]

There seems no reason why the compensation obligations in connection with temporary powers should not require the payment of rental occupation sum half-yearly, by analogy with the obligation to make advance payments where possession is taken in advance of permanent acquisition.

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[67] S.43 Railways Clauses Consolidation Act 1845.
[68] Eg, para 1(4), Schedule 5, Crossrail Act 2008; Transport and Works (Model Clauses for Railways and Tramways) Order 2006, Schedule 1, para 24(5).
[69] See s.107(1)(b), in the case of the revocation of a planning permission.
[70] See *Hobbs (Quarries) Ltd v Somerset CC* (1975) 30 P&CR 286.

The real problems arise where the land is tenanted. A difficulty could arise where a tenant stops paying rent. If the statutory undertaker contends that there is no basis for that failure, perhaps because the doctrine of frustration does not apply, the landlord may be left only with a rent action against his tenant, and no entitlement to claim compensation.[72] If the tenant continues to pay the rent, an element of double-counting might arise if he claims that rent and loss of profits. There could also be difficulties if the relevant lease provides for a rent review by reference to a valuation date during the period of temporary possession. The valuation is likely to reflect the real world of lack of entitlement to possession, and the rent could be fixed on that basis until the next rent review. Whilst there seems no reason why the landlord should not be compensated for the consequential depreciation in value of his interest, there is no valuation date for the assessment of the temporary possession compensation. There is no reason why the landlord should not be compensated for the depreciation in rental value on the basis determined in *Wildtree Hotels Ltd v Harrow LBC*.[73] But it be arguable that the tenant may gain a benefit, a lower rent for a period of time, and therefore higher profits, which would be attributable to the scheme, and brought into account in any disturbance claim.

Conclusions

The following matters put themselves forward as candidates for law reform:

1. That there should be a general power of temporary possession capable of application in connection with highway schemes;

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[71] Rule (6), s.5, Land Compensation Act 1961 and *Director of Buildings and Lands v Shun Fung Ironworks* [1952] 2 AC 111.

[72] For a different aspect of the problems of acquiring a leasehold interest, see *Richard Parsons Ltd v Bristol City Council* (2007) 47 EF 174.

[73] [2001] 2 AC 1.

2. That any doubt about the inclusion of a power of temporary possession in T&WO and DCOs should be settled by amendments to the appropriate legislation;
3. That there should be limits on the taking of temporary possession of land in advance of its permanent acquisition;
4. That where temporary possession is taken, compensation for the use of land should be payable half-yearly.