
STATUTORY INSTRUMENTS

2014 No. 3328

The Wellington C Gas Pipeline Order 2014

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of existing rights in land

16.—(1) The undertaker may acquire compulsorily the existing rights in so much of the Order land within the works limits (including for the avoidance of doubt the subsoil) as are required for the authorised development or to facilitate, or are incidental to, it and as are described in the book of reference and shown on the land plans.

(2) As from the date on which a compulsory acquisition notice is served or the date on which the land acquired under paragraph (1) or any part of it is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, easements, liberties, privileges, advantages, restrictions, covenants, trusts and incidents to which it was previously subject.

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

Time limit for exercise of authority to acquire land compulsorily

17.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act⁽¹⁾; and
- (b) no notice or declaration may be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981⁽²⁾ as applied by article 21 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

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

Compulsory acquisition of new rights, etc.

18.—(1) The undertaker may create and acquire compulsorily new rights over those parts of the Order land specified in column (1) of Schedule 5 (land in which only new rights, etc. may be acquired) as may be required for the purpose specified in relation to that land in column (2) of that Schedule or as may be required for facilitating the construction of, or are incidental to, the authorised development.

(1) Section 5 (notice to treat, and untraced owners) of the Compulsory Purchase Act 1965 was amended by section 67 of the Planning and Compensation Act 1991 and by paragraph 60 of Schedule 1 to [S.I. 2009/1307](#).

(2) [1981 c.66](#).

(2) The undertaker may also impose the restrictive obligations specified in column (3) of Schedule 6 (land over which restrictive obligations and rights of support are required) over the Order land specified in column (2) of that Schedule.

(3) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new rights are acquired is discharged from all rights, easements, liberties, privileges, advantages, restrictions, covenants, trusts and incidents to which it was previously subject so far as their continuance would be inconsistent with the exercise of that new right.

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

(5) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights, etc.) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive obligation.

Power to override easements and other rights

19.—(1) The carrying out or use of development authorised by this Order and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), notwithstanding that it involves—

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of a contract.

(2) The interests and rights to which this article applies include any easements, liberties, privileges and advantages annexed to land and adversely affecting other land, including any natural right to support, and include restrictions as to the user of the land arising by virtue of a contract having that effect or any other covenants, trusts or incidents.

(3) Compensation in respect of any interference or breach pursuant to this article—

- (a) is payable under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance)⁽³⁾; and
- (b) will be assessed subject to section 10(2) of the 1965 Act⁽⁴⁾, which applies by virtue of section 152(5) of the 2008 Act; and

any rule or principle applied to the construction of section 10 of the 1965 Act will be applied to the construction of this paragraph (with any necessary modifications).

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

Private rights of way

20.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or

⁽³⁾ Section 152 was amended by paragraph 293 of Schedule 1 to [S.I. 2009/1307](#).

⁽⁴⁾ Section 10 was amended by paragraph 63 of Schedule 1 to [S.I. 2009/1307](#) and paragraph 13 of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11).

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being within the limits of land that may be acquired shown on the land plans, is required for the purposes of this Order are extinguished on the appropriation of the land by the undertaker for any of those purposes.

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers, etc.)⁽⁵⁾ or article 27 (statutory undertakers) applies.

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

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land;

(ii) the undertaker's appropriation of it;

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

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

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

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

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

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

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

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

Application of Compulsory Purchase (Vesting Declarations) Act 1981

21.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981⁽⁶⁾ applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, has effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land or rights over land subject to a compulsory purchase order, the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

⁽⁵⁾ Section 138 was amended by section 23(4) of the Growth and Infrastructure Act 2013.

⁽⁶⁾ 1981 c.66.

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds 1 month.”

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 must be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land or rights over land under this Order.

Acquisition of subsoil

22.—(1) In connection with the compulsory acquisition of the existing rights referred to in article 16 (compulsory acquisition of existing rights in land) and the compulsory creation and acquisition of the new rights referred to in article 18 (compulsory acquisition of rights, etc.) and article 27 (statutory undertakers), the undertaker may acquire compulsorily such rights in the subsoil as may be required for any purpose for which the previously-mentioned rights may be acquired under that provision for the purposes of the authorised development.

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

Rights under or over streets

23.—(1) The undertaker may enter on and appropriate so much of the subsoil of, or air-space over, any street within the works limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

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

(4) Subject to paragraph (5), any person who is an owner or occupier of land appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and who

suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary use of land for carrying out authorised development

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

- (a) enter on and take temporary possession of the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in column (3) of that Schedule;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on that land.

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

(3) The undertaker may not, without the agreement of the owner of the land, remain in possession of any plot specified in Schedule 8 after the expiration of 1 year from the date that the authorised development has been completed in that plot unless notice of entry has been given under section 11 of the 1965 Act⁽⁷⁾ or the land is the subject of a general vesting declaration.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.

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

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1) except that the undertaker is not precluded from acquiring new rights over any part of that land including the subsoil under article 18 (compulsory acquisition of rights, etc.) and article 22 (acquisition of subsoil).

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

(10) Section 13 of the 1965 Act (refusal to give possession to acquiring authority)⁽⁸⁾ applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory

⁽⁷⁾ Section 11 was amended by paragraph 14(3) of Schedule 4 to the Acquisition of Land Act 1981 (c.67), Part 1 of Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c.71), paragraph 12(1) of the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1) and paragraph 64 of Schedule 1 to S.I. 2009/1307.

⁽⁸⁾ Section 13 was amended by section 139 of, and paragraph 28(2) of Schedule 13 and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c.15).

acquisition of land or rights over land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 8.

Temporary use of land for maintaining authorised development

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

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

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

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

(3) Not less than 28 days before entering on and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land, except as provided in paragraph (12).

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

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

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

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

(8) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(11) In this article, "maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

(12) Where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; or

(c) the surrounding environment,
the requirement to serve not less than 28 days' notice under paragraph (3) does not apply, and the undertaker may enter the land pursuant to paragraph (1) subject to giving such period of notice (if any) as is reasonably practicable in all the circumstances.

No double recovery

26. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Statutory undertakers

27. Subject to compliance with the provisions of Schedule 9 (protective provisions), the undertaker may—

- (a) create and acquire compulsorily the new rights over those parts of the Order land belonging to statutory undertakers as specified in column (1) of Schedule 5 (land in which only new rights, etc. may be acquired) as may be required for the purpose specified in relation to that land in column (2) of that Schedule);
- (b) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers within the works limits or as described in the book of reference;
- (c) extinguish the rights of, and remove or reposition the apparatus belonging to, statutory undertakers within the works limits; and
- (d) construct over existing apparatus belonging to statutory undertakers any necessary track or roadway (whether temporary or permanent) together with the right to maintain and or remove the same, and install such service media under or over the existing apparatus needed in connection with the authorised development.

Recovery of costs of new connections

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

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but, where such a sewer is removed under article 27, any person who is—

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

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

(3) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003⁽⁹⁾; and

“public utility undertaker” has the same meaning as in the 1980 Act⁽¹⁰⁾.

⁽⁹⁾ 2003 c.21.

⁽¹⁰⁾ “Public utility undertakers” is defined in section 329.

Railway and navigation crossings

29.—(1) Subject to the following provisions of this article, the undertaker may not under article 10 (street works) break up or open a street where the street, not being a highway maintainable at the public expense (within the meaning of the 1980 Act(**11**)),—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertakers, to such an authority or to any other person,

except with the consent of the undertakers, authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Paragraph (1) does not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act(**12**).

(3) A consent given for the purpose of paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but must not be unreasonably withheld.

(4) In this article, “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary or harbour.

(11) “Highway maintainable at the public expense” is defined in section 329.

(12) “Emergency works” is defined in section 52.