
STATUTORY INSTRUMENTS

2016 No. 880

The Triton Knoll Electrical System Order 2016

PART 5

Powers of acquisition

Compulsory acquisition of land

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

(2) This article is subject to—

- (a) article 17 (time limit for exercise of authority to acquire land compulsorily);
- (b) article 18(2) (compulsory acquisition of rights);
- (c) article 24(9) (temporary use of land for carrying out authorised project); and
- (d) article 40 (Crown rights).

(3) From the day on which a compulsory acquisition notice under section 134 of the 2008 Act⁽¹⁾ is served or the day on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, the land or that part of it that is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

Compulsory acquisition of land: minerals

16. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 (minerals) are incorporated in this Order, subject to the following modifications—

- (a) paragraph 8(3) is not incorporated;
- (b) for “acquiring authority” substitute “undertaker”; and
- (c) for “undertaking” substitute “authorised project”.

Time limit for exercise of authority to acquire land compulsorily

17.—(1) After 4th September 2021—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration may be executed under section 4 of the 1981 Act⁽²⁾ as applied by article 20 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 24 ceases at the end of 4th September 2021, except that nothing in this paragraph prevents the undertaker remaining in possession of land after that date, if the land was entered, and possession taken, on or before 4th September 2021.

⁽¹⁾ Section 134 was amended by section 142 of, and Schedule 25 to, the Localism Act 2011.

⁽²⁾ Section 4 is amended, from a date to be appointed, by sections 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c.22).

Compulsory acquisition of rights

18.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights or impose such restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 15 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights, etc. may be acquired), the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights and the imposition of such restrictive covenants as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 of the 1965 Act (other provisions as to divided land) as substituted by paragraph 5 of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and restrictive covenants), where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 6 has effect for the purpose of modifying the enactments referred to in that Schedule in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of restrictive covenants.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

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

Private rights

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

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or restrictive covenant—

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

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker which, being within the limits of land which 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.

(4) Subject to the provisions of this article, all private rights 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.

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act⁽³⁾ to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 of the 2008 Act⁽⁴⁾ (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 27 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

- (i) the completion of the acquisition of the land or the acquisition of rights or the imposition of restrictive covenants over or affecting the land;
- (ii) the undertaker's appropriation of the land;
- (iii) the undertaker's entry onto it; or
- (iv) the undertaker's taking temporary possession of it,

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

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

(8) If any agreement referred to in paragraph (7)(b)—

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

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

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

(9) References in this article to private rights over land include references to any trusts or incidents to which the land is subject.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

20.—(1) The 1981 Act applies as if this Order were a compulsory purchase order and as if the undertaker were a public authority under section 1(2) of that Act.

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

(3) In section 3 (preliminary notices), for subsection (1) substitute—

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

- (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 where the land is situated.”.

(4) In that section, in subsection (2)—

(a) for “(1)(b)” substitute “(1)”; and

(b) after “given” insert “and published”.

⁽³⁾ Section 152 was amended by [S.I. 2009/1307](#).

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

(5) In that section, for subsections (5) and (6) substitute—

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

- (a) the person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in the reversion; or
- (b) the 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” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

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

(8) References to the 1965 Act in the 1981 Act must be construed as references to that Act as applied by section 125 of the 2008 Act(5) to the compulsory acquisition of land under this Order.

Acquisition of subsoil only

21.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in article 15(1) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

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

(3) Paragraph (2) does not prevent article 23 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

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

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

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

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

(4) Subject to paragraph (5), any person who—

- (a) 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
- (b) suffers loss as a result,

is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Section 125 was amended by paragraph 17 of Schedule 16 to the Housing and Planning Act 2016.

(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.

Acquisition of part of certain properties

23.—(1) This article applies instead of section 8(1) of the 1965 Act (other provisions as to divided land) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (the “owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (the “land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (the “land subject to the counter-notice”).

(3) If no counter-notice is served within that period, the owner is required to sell the land subject to the notice to treat.

(4) If a counter-notice is served within that period, the question whether the owner is required to sell only the land subject to the notice to treat must, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the Tribunal.

(5) If on a reference the Tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner is required to sell the land subject to the notice to treat.

(6) If on a reference the Tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) in the case of part of land consisting of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat is deemed to be a notice to treat for that part.

(7) If on a reference the Tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If—

- (a) the undertaker agrees to take the land subject to the counter-notice; or
- (b) the Tribunal determines that—

- (i) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (ii) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the Tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, if it does so, must pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the Tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Temporary use of land for carrying out authorised project

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

- (a) enter on and take temporary possession of—
 - (i) the land specified in column (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised project specified in column (4) of that Schedule; and
 - (ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) (other than in connection with the acquisition of rights or restrictive covenants only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any buildings and vegetation from that land;
- (c) construct any permanent or temporary works (including the provision of means of access), haul roads, security fencing, bridges, structures and buildings on that land;
- (d) use the land for the purposes of a working site with access in connection with the authorised project; and
- (e) construct or carry out any works (including mitigation works or operations) or use the land for the purposes of the authorised project.

(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 owners of the land, remain in possession of any land under this article—

- (a) in the case of land specified in paragraph (1)(a)(i) above, after the end of the period of 1 year beginning with the date of completion of the part of the authorised project specified in relation to that land in column (4) of Schedule 7; or

- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of 1 year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land or has otherwise acquired the land subject to temporary possession.
- (4) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(i), unless otherwise agreed by the owners of the land, the undertaker must remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—
- (a) replace a building removed under this article;
 - (b) remove or reposition any apparatus belonging to statutory undertakers or any necessary mitigation works.
- (5) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(ii), unless otherwise agreed by the owners of the land, the undertaker must either acquire the land referred to in paragraph (3)(b) or remove all 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.
- (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 powers conferred by 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 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).
- (9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) (but the undertaker is not precluded from carrying out a survey of that land under article 13 (authority to survey and investigate land)).
- (10) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (11) Section 13 of the 1965 Act(6) (refusal to give possession to acquiring authority) applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised project

- 25.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the authorised project, the undertaker may—
- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project;
 - (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised project; and

(6) 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).

- (c) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for those purposes.
- (2) Paragraph (1) does not authorise the undertaker to take temporary possession of—
 - (a) any house or garden belonging to a house;
 - (b) any building (other than a house) if it is for the time being occupied; or
 - (c) any land seaward of MHWS.
- (3) Not less than 28 days before entering on and taking temporary possession of land under this article, the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The undertaker may 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 project for which possession of the land was taken.
- (5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (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 powers conferred by 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 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (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 applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act.
- (11) In this article, "maintenance period", in relation to any part of the authorised project, means the period of 5 years beginning with the date on which that part of the authorised project first exports electricity to the national electricity transmission network.

Protective provisions

- 26. Schedule 8 (protective provisions) has effect.

Statutory undertakers

- 27.—(1) Subject to Schedule 8, the undertaker may—
 - (a) exercise the powers conferred by articles 15 and 18 in relation to so much of any land referred to in those articles as belongs to statutory undertakers;
 - (b) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order limits; and
 - (c) extinguish the rights of, remove, relocate or reposition the apparatus belonging to statutory undertakers over or within the Order limits.

(2) In this article, a reference to a statutory undertaker includes a reference to a public communications provider (as defined in article 29(4) (recovery of costs of new connections)).

No double recovery

28. 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.

Recovery of costs of new connections

29.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 27, 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 which communicated with the sewer; or
- (b) the owner of a private sewer which communicated with the sewer,

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

(3) This article does not have effect in relation to apparatus to which Part 3 of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(7);

“public utility undertaker” has the same meaning as in the 1980 Act(8).

Special category land

30.—(1) On the exercise by the undertaker of the Order rights, so much of the special category land as is required for the purposes of the exercise of those rights is discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of the Order rights.

(2) In this article—

“Order rights” means rights exercisable over the special category land by the undertaker under article 18;

“special category land” means the land identified as such on the land plans and numbered 01/01 in the book of reference.

(7) 2003 c.21.

(8) “Public utility undertaker” is defined in section 329.