
STATUTORY INSTRUMENTS

2015 No. 318

**The Dogger Bank Creyke Beck
Offshore Wind Farm Order 2015**

PART 5

Powers of acquisition

Compulsory acquisition of land

21.—(1) Bizco 1 may acquire compulsorily so much of the Order land as is required for the Project A onshore works, the Project A offshore works, the shared works or to facilitate, or is incidental to, the construction and maintenance of those works.

(2) Bizco 4 may acquire compulsorily so much of the Order land as is required for the Project B onshore works, the Project B offshore works and the shared works or to facilitate, or is incidental to, the construction and maintenance of those works.

(3) From the day on which a compulsory acquisition notice 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 the 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.

(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 is subject to—

- (a) article 9 (Bizco 1 and Bizco 4 may enter certain land for purpose of construction);
- (b) article 24 (compulsory acquisition of rights); and
- (c) article 29 (temporary use of land for carrying out authorised project).

Compulsory acquisition of land: minerals

22. Part 2 of Schedule 2 to the Acquisition of Land Act 1981 (minerals) is incorporated in this Order, subject to the modification that for “acquiring authority” there is substituted “undertaker”.

Time limit for exercise of authority to acquire land compulsorily, etc.

23.—(1) After 11th March 2020—

- (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 Compulsory Purchase (Vesting Declarations) Act 1981⁽¹⁾ (execution of declaration) as applied by article 26 (application of Compulsory Purchase (Vesting Declarations) Act 1981).

(1) 1981 c.66.

(2) The authority conferred by article 29 (temporary use of land for carrying out authorised project) ceases on 11th March 2020, but nothing in this paragraph prevents the undertaker remaining in possession of land after that date, if the land was entered and possession was taken before that date.

Compulsory acquisition of rights

24.—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 21 (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 an entry in column (1) of Schedule 5 (land over which only new rights may be acquired), the powers of compulsory acquisition conferred by this Order are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in the corresponding entry in column (2) and described in the book of reference.

(3) From the day on which a compulsory acquisition notice is served or the day on which any new right is vested in the undertaker, whichever is the later, the land over which any new right is acquired 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 that new right.

(4) Subject to section 8 of the 1965 Act⁽²⁾, where the undertaker acquires a right over the Order land under this article, the undertaker is not to be required to acquire a greater interest in that land.

(5) After the completion of any activities in exercise of the rights under this article, the land must be restored, so far as practicable, to its original condition.

(6) Any person who suffers loss as a result of 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.

(7) Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights) 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 Order of a right over land by the creation of a new right.

Private rights of way

25.—(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) 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⁽³⁾ (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 that, being within the limits of land that may be acquired shown on the land plan, 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.

(2) Section 8 was amended by paragraph 62 of Schedule 1 to [S.I. 2009/1307](#).

(3) Section 11(1) was amended by paragraph 14 of Schedule 4 to the Acquisition of Land Act 1981 and paragraph 12 of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 ([2006 No. 1](#)).

(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⁽⁴⁾ (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 31 (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,

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

(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

26.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 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 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 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) the person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

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

(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” 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 under this Order.

Acquisition of part of certain properties

27.—(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 is served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat that states that the owner is willing and able to sell the whole (the “land subject to the counter-notice”).

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

(4) If such a counter-notice is served within that period, the question whether the owner must be 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 such 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) where the land subject to the notice to treat consists 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 such 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) where the land subject to the notice to treat consists 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 such 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 that the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the Tribunal determines that—

(a) 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

(b) 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 that 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, in that event, 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.

Rights under or over streets

28.—(1) The undertaker may enter, 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 that 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) 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 project

29.—(1) The undertaker may, in connection with the carrying out of the authorised project enter, and take temporary possession of, the land specified in an entry in column (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in the corresponding entry in column (3) relating to the part of the authorised project specified in the corresponding entry in column (4) for the purpose of exercising the rights identified in Class 9 in the book of reference.

(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 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.

(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 its original condition, but the undertaker is 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 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 10(2) of the 1965 Act (further provision 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 (5).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1).

(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⁽⁵⁾ (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

Temporary use of land for maintaining authorised project

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

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

- (a) any house or garden belonging to a house; or

(5) 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).

(b) any building (other than a house) if it is for the time being occupied.

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

(4) The undertaker may 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 its original condition.

(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 10(2) of the 1965 Act (further provision as to compensation for injurious affection) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

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

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

(11) In this article, "maintenance period", in relation to any part of the authorised project, means the period of 5 years beginning with the day on which that stage of the authorised project is brought into commercial operation.

Statutory undertakers

31.—(1) Subject to Parts 1 to 4 of Schedule 12 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers shown on the land plan within the Order limits and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to, statutory undertakers within the Order limits; and
- (c) acquire compulsorily the new rights over land belonging to statutory undertakers within the Order limits and described in the book of reference.

(2) In this article, a reference to a statutory undertaker includes a reference to a public communications provider (as defined in article 32(3) (recovery of costs of new connections)).

Recovery of costs of new connections

32.—(1) Where any apparatus of a public utility undertaker or a public communications provider is removed under article 31 (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 31, any person who is—

- (a) the owner or occupier of premises, the drains of which communicated with that sewer; or
- (b) the owner of a private sewer 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) 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⁽⁶⁾;

“public utility undertaker” has the same meaning as in the 1980 Act⁽⁷⁾.

Application of landlord and tenant law

33.—(1) This article applies to—

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

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

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

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

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

Special category land

34.—(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 24 (compulsory acquisition of rights);

⁽⁶⁾ 2003 (c.21).

⁽⁷⁾ “Public utility undertakers” is defined in section 329.

“special category land” means the land in the East Riding of Yorkshire identified in the book of reference and on the special category land plan attached to the land plan and—

- (a) forming part of Figham Common and numbered 99Aii, 99Bii, 100A, 100B, 101A, 101B, 102A, 102B, 103A, 103B, 104A and 104B;
- (b) forming open space and numbered 1Ai, 1Aii, 1Bi, 1Bii, 2i, 4Ai, 4Bi, 4Bii and 4Biii.