
STATUTORY INSTRUMENTS

2016 No. 987

The Brechfa Forest Wind Farm Connection Order 2016

PART 5

Powers of acquisition

Application and modification of legislative provisions

18. Subject to the modifications set out in Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction, as they apply to the compulsory purchase of land and interests in land.

Compulsory acquisition of rights in, under or over land

19.—(1) The undertaker may acquire compulsorily rights in, under or over so much of the Order land described in the book of reference, as is required for the construction, use and maintenance of the authorised development or is incidental to it or required to facilitate it.

(2) The acquisition of rights in, under or over the land in this article 19 shall include the compulsory acquisition of a right in, under or over land by creation of a new right.

(3) The undertaker may impose the restrictions, in, under or over the Order land described in the book of reference, as well as by acquiring the rights and the benefits of restrictions already in existence.

(4) This article is subject to article 27 (temporary use of land by the undertaker).

(5) Subject to section 8 of the 1965 Act (provisions as to divided land) as substituted by paragraph 5 of Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right in, under or over land under this article or imposes a restriction under paragraph (3) the undertaker is not required to acquire a greater interest in that land.

(6) In any case where the acquisition of rights under this article or the imposition of a restriction under paragraph (3) 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 or impose such restrictions to the statutory undertaker in question.

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

(8) No interest in Crown land may be acquired pursuant to this Order unless the appropriate Crown authority consents to such acquisition.

Statutory authority to override easements and other rights

20.—(1) The carrying out or use of the authorised development 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 use of land arising by virtue of contract.

(2) The undertaker must pay compensation to any person whose land is injuriously affected by—

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

caused by the carrying out or use of development authorised by this Order and the operation of section 158 of the 2008 Act.

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

(4) Subsection (2) of section 10 of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act applies to the construction of paragraph (2) with any necessary modifications.

Compulsory acquisition of land – incorporation of the mineral code

21. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(1) (minerals) are incorporated into this Order subject to the modifications that—

- (a) paragraph 8(3) is not incorporated; and
- (b) for “the acquiring authority” there is substituted “the undertaker”.

Time limit for exercise of authority to acquire rights in land compulsorily

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

- (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 as applied by article 25 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The authority conferred by article 27 (temporary use of land by the undertaker) ceases at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the undertaker remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

Suspension of private rights

23.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition of rights or the imposition of restrictions under the Order shall be suspended as is necessary to ensure the operation of this Order and in so far as their continuance would be inconsistent with the exercise of the right acquired or the burden of the restriction imposed—

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

(1) 1981 c. 67.

(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 earliest.

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

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

(4) This article does not apply in relation to any right to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

(5) Paragraphs (1) and (3) have effect subject to—

(a) any notice given by the undertaker before—

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

(ii) the undertaker's appropriation of it;

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

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

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

(b) any agreement made, in so far as it relates to the authorised development, at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested, belongs or benefits.

(6) If any such agreement as is referred to in paragraph (5)(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.

(7) Reference in this article to private rights and restrictive covenants over land includes any trust, incident, easement, wayleave, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by virtue of a contract having that effect.

Extinguishment of private rights and restrictive covenants relating to Western Power Distribution (South Wales) Plc's apparatus removed from land subject to temporary possession

24.—(1) This article applies to any Order land specified in Schedule 8 (land of which temporary possession may be taken) of which the undertaker takes temporary possession under article 27 (temporary use of land by the undertaker).

(2) All private rights vested in Western Power Distribution (South Wales) Plc or restrictive covenants the benefit of which are vested in Western Power Distribution (South Wales) Plc in relation to apparatus removed from any land to which this article applies pursuant to Schedule 1 (authorised development) are extinguished from the date on which the undertaker gives up temporary possession of that land.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

- 25.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, 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 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 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 one 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 1981 Act are construed as references to the 1965 Act as applied by section 125 of the 2008 Act (application of compulsory acquisition provisions) to the compulsory acquisition of rights in land under this Order.

Rights under or over streets

- 26.**—(1) The undertaker may enter on and use 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 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 which 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 by the undertaker

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

- (a) enter on and take temporary possession of—
 - (i) so much of the land specified in column (1) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule relating to the part of the authorised development specified in column (3) of that Schedule; and
 - (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act;
- (b) remove any electric line, electrical plant, structures, apparatus and vegetation from that land;
- (c) construct works (including the provision of means of access) on that land; and
- (d) construct any works specified in relation to that land in column (2) of Schedule 8, or any other mitigation works.

(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 referred to in paragraph 1(a)(i), after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (3) of Schedule 8, or
- (b) in the case of land referred to in paragraph 1(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless the undertaker has, by 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.

(4) The undertaker must provide the owner of any land of which temporary possession has been taken under paragraph (3) with written notice of the date of completion of the work for which temporary possession was taken within 28 days of the completion of those works.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker shall remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land but the undertaker shall not be 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 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 carrying out 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 under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

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

Temporary use of land for maintaining the authorised development

28.—(1) At any time during the maintenance period relating to any part of the authorised development, the undertaker may—

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

(2) Not less than 28 days before entering upon 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 only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(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.

(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 powers 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 maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

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

(9) Section 13 of the 1965 Act (refusal to give possession to the 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).

(10) In this article “the maintenance period”, in relation to any part of the authorised development means the period of five years beginning with the date on which that part of the authorised development is brought into operational use.

Statutory undertakers

29. Schedule 9 (protective provisions) shall have effect and subject to its provisions, the undertaker may—

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

Recovery of costs of new connections

30.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (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 29 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 which 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 paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(2); and

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

(2) 2003 c.21. There are amendments to the Act which are not relevant to this Order.