
STATUTORY INSTRUMENTS

2017 No. 817

**The National Grid (Richborough Connection
Project) Development Consent Order 2017**

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of right: incorporation of the mineral code

19. 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 compulsorily

20.—(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; 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).

(2) The authority conferred by article 28 (temporary use of land by National Grid) and article 29 (temporary use of land by UK Power Networks) 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.

Compulsory acquisition of rights

21.—(1) Subject to the provisions of this article the undertaker may acquire compulsorily the rights, and impose the restrictions, over the Order land, described in the book of reference, by creating them as well as by acquiring rights and the benefits of restrictions already in existence.

(2) This article is subject to article 28 (temporary use of land by National Grid) and article 29 (temporary use of land by UK Power Networks).

(3) Subject to section 8 of the 1965 Act (other provisions as to divided land) as substituted by paragraph 5 of Schedule 10 to this Order (modification of compensation and compulsory purchase enactments for creation of new rights) where the undertaker acquires a right over land or imposes a restriction under paragraph (1) the undertaker is not required to acquire a greater interest in that land.

(1) [1981 c. 67](#). Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act [1994 \(c. 21\)](#) and paragraph 8 of Part 3 of that Schedule 2 was amended by section 46 of the Criminal Justice Act [1982 \(c. 48\)](#). There are other amendments to this Act which are not relevant to this Order.

(2) [1981 c. 66](#). Sections 2 and 116 were amended by section 4 of, and paragraph 52 of Schedule 2 to, the Planning (Consequential Provisions) Act [1990 \(c. 11\)](#). There are other amendments to this Act which are not relevant to this Order.

(4) Schedule 10 to this Order 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 restriction.

(5) In any case where the acquisition of rights or the imposition of a restriction 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 or impose such restrictions to the relevant statutory undertaker.

(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.

(7) Nothing in this article authorises the acquisition of rights over, or the imposition of restrictions affecting, an interest which is for the time being held by or on behalf of the Crown.

Crown rights

22.—(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee to use, enter on or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) A consent under paragraph (1)—

- (a) may be given unconditionally or subject to terms and conditions;
- (b) is deemed to have been given in writing where it is sent electronically.

Extinguishment and 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 extinguished 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
- (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 and restrictive covenants over land owned by the undertaker which, being within the Order limits, is required for the purposes of

this Order, are extinguished on the commencement of any activity authorised by this Order which interferes with or breaches such rights or such restrictive covenants.

(3) Subject to the provisions of this article and article 24 (extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession), 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.

(4) Any person who suffers loss by the extinguishment or 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.

(5) 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 32 (statutory undertakers) applies.

(6) Paragraphs (1) to (4) 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.

(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 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.

(8) A 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 (including any land forming part of a common, open space or fuel or field garden allotment) and adversely affecting other land, including any natural right to support.

Extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession

24.—(1) This article applies to any Order land specified in Part 1 (National Grid) and Part 2 (UK Power Networks) of Schedule 8 (extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession) and any other Order land of which National Grid takes temporary possession under article 28 (temporary use of land by National Grid) or UK Power Networks takes temporary possession under article 29 (temporary use of land by UK Power Networks).

(2) All private rights or restrictive covenants in relation to apparatus belonging to National Grid or UK Power Networks removed from any land to which this article applies are extinguished from

the date on which National Grid or UK Power Networks give up temporary possession of that land under article 28(5) and 28(6) or 29(5) and 29(6), as the case may be.

(3) The extinguishment of rights by paragraph (2) does not give rise to any cause of action relating to the presence on or in the land of any foundations (save for those which lie less than 1.5 metres underground) referred to in article 28(5)(c) and 28(6)(c) or 29(5)(c) and 29(6)(c) (National Grid and UK Power Networks not required to remove foundations when giving up temporary possession).

(4) Schedule 8 has effect.

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 5 (earliest date for execution of declaration), subsection (2) is omitted.

(4) Section 5A is omitted(3).

(5) References to the 1965 Act in the 1981 Act must be 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 land under this Order.

Acquisition of subsoil or air-space only

26.—(1) The undertaker may compulsorily acquire such rights, and impose such restrictions, in the subsoil of, or the air-space of, the land referred to in article 21 (compulsory acquisition of rights) as may be required for any purpose for which such rights or restrictions may be acquired in land under that provision instead of acquiring the rights or imposing restrictions over the whole of the land.

(2) Where the undertaker acquires any right or imposes any restriction in the subsoil of, or the air-space over, land under paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

Rights under or over streets

27.—(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.

(3) Section 5A to the 1981 Act was inserted by section 182(2) of the Housing and Planning Act 2016 (c.22).

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing of 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 National Grid

28.—(1) National Grid 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 Part 1 of Schedule 11 (land of which temporary possession may be taken) to exercise the powers described in the book of reference and for the purpose specified in relation to that land in column (2) of Part 1 of that Schedule relating to the part of the authorised development specified in column (3) of Part 1 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 (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, buildings, structures, pylons, apparatus and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any works specified in relation to that land in column (2) of Part 1 of Schedule 11, or any other mitigation works.

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

(3) National Grid 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 Part 1 of Schedule 11, 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 National Grid 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) National Grid must provide the owner of any land of which temporary possession has been taken under this article with written notice of the date of completion of the works 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 paragraph (1)(a)(i), National Grid must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but National Grid is not required to—

(a) replace a building, structure, electric line, electrical plant or pylon removed under this article;

(b) restore the land on which any works have been carried out under paragraph (1)(d) insofar as the element of works shown in column (4) of Part 1 of Schedule 11 is concerned;

(c) remove any foundations to a depth greater than 1.5 metres below adjoining ground level; or

(d) remove any pylons or electric lines or underground cables constructed or installed on, over, under, or in that land as part of the authorised development.

(6) 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, National Grid must either acquire the interest on, over, or in the land in accordance with the provisions of paragraph (3)(b) or remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but National Grid is not required to—

- (a) replace a building, structure, electric line, electrical plant or pylon removed under this article;
- (b) restore the land on which any works have been carried out under paragraph (1)(d) insofar as the element of works shown in column (4) of Part 1 of Schedule 11 is concerned;
- (c) remove any foundations to a depth greater than 1.5 metres below adjoining ground level; or
- (d) remove any pylons or electric lines or underground cables constructed or installed on, over, under, or in that land as part of the authorised development.

(7) National Grid 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.

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

(9) 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 (7).

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

(11) 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).

(12) Nothing in this article prevents National Grid from taking temporary possession more than once in relation to any land specified in Part 1 of Schedule 11.

Temporary use of land by UK Power Networks

29.—(1) UK Power Networks may, in connection with the carrying out of the UK Power Networks works—

- (a) enter on and take temporary possession of—
 - (i) so much of the land specified in column (1) of Part 2 of Schedule 11 (land of which temporary possession may be taken) to exercise the powers described in the book of reference and for the purpose specified in relation to that land in column (2) of Part 2 of that Schedule relating to the part of the authorised development specified in column (3) of Part 2 of that Schedule; and
 - (ii) any other Order land in respect of the UK Power Networks works 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 lines, electrical plant, buildings, structures, pylons, apparatus and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings on that land; and

- (d) construct any works specified in relation to that land in column (2) of Part 2 of Schedule 11, or any other mitigation works.
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article, UK Power Networks must serve notice of the intended entry on the owners and occupiers of the land.
- (3) UK Power Networks 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 Part 2 of Schedule 11, 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) UK Power Networks must provide the owner of any land of which temporary possession has been taken under this article with written notice of the date of completion of the works 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 paragraph (1)(a)(i), UK Power Networks must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but UK Power Networks is not required to—
- (a) replace a building, structure, electric line, electrical plant or pylon removed under this article;
 - (b) remove any pylons, electric lines or underground cables constructed or installed on, over, under or in that land as part of the UK Power Networks works;
 - (c) remove any foundations to a depth greater than 1.5 metres below adjoining ground level; or
 - (d) restore the land on which any works have been carried out under paragraph 1(d) insofar as the element of works shown in column (4) of Part 2 of Schedule 11 is concerned.
- (6) 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, UK Power Networks must either acquire the interest on, over, or in the land in accordance with the provisions of paragraph (3) (b) or remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but UK Power Networks is not required to—
- (a) replace a building, structure, electric line, electrical plant or pylon removed under this article;
 - (b) remove any pylons, electric lines or underground cables constructed or installed on, over, under or in that land as part of the UK Power Networks works;
 - (c) remove any foundations to a depth greater than 1.5 metres below adjoining ground level; or
 - (d) restore the land on which any works have been carried out under paragraph 1(d) insofar as the element of works shown in column (4) of Part 2 of Schedule 11 is concerned.
- (7) UK Power Networks 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.
- (8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (9) 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 (7).

(10) Where UK Power Networks takes possession of land under this article, UK Power Networks is not required to acquire the land or any interest in it.

(11) 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).

(12) Nothing in this article prevents UK Power Networks from taking temporary possession more than once in relation to any land specified in Part 2 of Schedule 11.

Temporary use of land for maintaining the authorised development

30.—(1) Subject to paragraph (2), at any time during the maintenance periods 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) and buildings 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) 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 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.

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

(11) In this article “the maintenance periods” 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, except where the authorised development is mitigation planting where “the maintenance periods” means the period of five years beginning with the date on which that part of the mitigation planting is completed.

Special category land

31.—(1) So much of the special category land as shall be required for the purposes of the exercising by the undertaker of the Order rights shall be discharged from all rights, trusts and incidents to which it was previously subject.

(2) So far as the temporary use of land under either article 28 and 29 is concerned, then the discharge in paragraph (1) is only for such time as the land is being used under either of those articles.

(3) In this article—

“Order rights” means rights and powers exercisable over the special category land by the undertaker under article 21 (compulsory acquisition of rights), article 28 (temporary use of land by National Grid) and article 29 (temporary use of land by UK Power Networks); and

“the special category land” means the land identified as forming part of a common, open space, or fuel or field allotment in the book of reference and on the plan entitled “special category land and crown land plans”.

Statutory undertakers

32. Subject to the provisions of Schedule 14 (Protective Provisions), the undertaker may—

- (a) acquire compulsorily interests, 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, or remove or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Recovery of costs of new connections

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

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“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(4); and

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