
STATUTORY INSTRUMENTS

2022 No. 299

The Bridgwater Tidal Barrier Order 2022

PART 4

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire rights in land

31.—(1) The Agency may acquire compulsorily such easements and other rights over so much of the land shown on the land plans as lying within the Order Limits as may be required for the purposes of constructing, operating or maintaining the scheduled works and any other purposes that are ancillary to the scheduled works by creating them as well as by acquiring easements or other rights already in existence.

(2) In relation to so much of the land shown on the land plans as lies within plot number 255a, the Agency may also impose such restrictive covenants as may be required for the purposes of operating or maintaining Work No. 1A.

(3) This article is subject to article 37 (temporary possession of land for construction purposes).

(4) Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights) 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, in the case of plot number 255a, the imposition of a restrictive covenant.

(5) Subject to section 8 of the 1965 Act⁽¹⁾ (other provisions as to divided land) (as modified by Schedule 4), where the Agency acquires a right over land under paragraph (1) the Agency cannot be required to acquire a greater interest in that land.

(6) Paragraph (7) applies to land which is used for the relocation of any apparatus which it is expedient to divert or replace in consequence of the carrying out of the authorised works.

(7) In relation to the land to which this paragraph applies, the power to acquire or create easements or other rights under paragraph (1) is to be treated as also authorising the acquisition or creation by a statutory undertaker in any case where the Secretary of State gives consent in writing for that acquisition or creation.

(8) In paragraph (7), “statutory undertaker” means—

- (a) a licence holder within the meaning of section 64(1) of the Electricity Act 1989,
- (b) a gas transporter within the meaning of section 7(1) of the Gas Act 1986⁽²⁾,

(1) Section 8 was amended by paragraphs 1 and 2 of Part 1 of Schedule 17 to the Housing and Planning Act 2016 (c. 22) and by S.I. 2009/1307.

(2) 1986 c. 44, section 7 was substituted by section 5 of the Gas Act 1995 (c. 40) and subsection (1) was amended by section 76(2) of the Utilities Act 2000 (c. 27) and Part 1 of Schedule 23 to the Energy Act 2004 (c. 20).

- (c) a water undertaker appointed pursuant to section 6(1) of the Water Industry Act 1991(3),
- (d) a sewerage undertaker,
- (e) any local authority which is a relevant local authority for the purposes of section 97 of the Water Industry Act 1991(4) (performance of sewerage undertaker’s functions by local authorities, etc.), and
- (f) a public communications provider within the meaning of section 151 of the Communications Act 2003(5) (interpretation of Chapter 1).

Power to acquire land

32. The Agency may acquire compulsorily so much of the land specified in columns (1) and (2) of Schedule 5 (land which may be compulsorily acquired) as may be required for the purposes of constructing, operating or maintaining the scheduled works and any other purposes that are ancillary to the scheduled works and may use any land so acquired for those purposes or for any other ancillary purposes.

Application of Part 1 of the 1965 Act

33.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981 applies, and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has effect with the following modifications.

- (3) Omit section 4(6) (which provides a time limit for compulsory purchase of land).
- (4) In section 4A(1)(7) (extension of time limit during challenge)—
 - (a) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order)” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3)”; and
 - (b) for “the three year period mentioned in section 4” substitute “the five year period mentioned in article 42 (time limit for exercise of powers of acquisition) of the Bridgwater Tidal Barrier Order 2022”.

(5) In section 11A(1)(a) and (2)(8) (powers of entry: further notice of entry) after “land” insert “under that provision”.

(6) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 42 of the Bridgwater Tidal Barrier Order 2022 (time limit for exercise of powers of acquisition)”.

- (7) In Schedule 2A(9) (counter-notice requiring purchase of land not in notice to treat)—
 - (a) in paragraphs 1 and 14, for sub-paragraph (2) substitute—

(3) As amended by section 36(2) of the Water Act 2003 (c. 37).

(4) Section 97 was amended by paragraph 17(b) of Schedule 15 and Part 4 of Schedule 18 to the Government of Wales Act 1998 (c. 38), by the Statute Law (Repeals) Act 1998 (c. 43), by paragraphs 55 and 57 of Schedule 8 to the Housing and Regeneration Act 2008 (c. 17), and by paragraphs 39 and 41 of Schedule 22 to the Localism Act 2011 (c. 20).

(5) 2003 c. 21.

(6) Section 4 was substituted by section 182(1) of the Housing and Planning Act 2016.

(7) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.

(8) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(9) Schedule 2A was inserted by paragraph 3 of Part 1 to Schedule 17 of the Housing and Planning Act 2016.

- “(2) But see article 35 of the Bridgwater Tidal Barrier Order 2022 (power to acquire subsoil or air-space), which excludes the acquisition of subsoil only from this Schedule.”;
- (b) after Part 3 insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 21 (protective works), article 37 (temporary possession of land for construction purposes) or article 38 (temporary possession of land for maintenance of works) of the Bridgwater Tidal Barrier Order 2022.”.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

34.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 applies to the Agency as if this Order were a compulsory purchase order, and has effect with the following modifications.

(2) Omit section 5(**10**) (earliest date for execution of declaration) and section 5A(**11**) (time limit for general vesting declaration).

(3) In section 5B(1)(**12**) (extension of time limit during challenge)—

(a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3)”; and

(b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 42 (time limit for exercise of powers of acquisition) of the Bridgwater Tidal Barrier Order 2022”.

(4) In section 6(1)(b)(**13**) (notices after execution of declaration) for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 14A of the Transport and Works Act 1992 (compulsory acquisition: notice requirements)”.

(5) In section 7(1)(a)(**14**) (constructive notice to treat), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(6) In Schedule A1(**15**) (counter-notice requiring purchase of land not in general vesting declaration) omit paragraph 1(2).

(7) References to the 1965 Act are to be construed as references to that Act as applied to the compulsory acquisition of land under article 33 (application of Part 1 of the 1965 Act).

Power to acquire subsoil or air-space

35.—(1) The Agency may compulsorily acquire so much of, or such rights in, the subsoil of, or the airspace over, the land referred to in article 31 (power to acquire rights in land) and article 32 (power to acquire land) 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.

(10) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016.

(11) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(12) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016.

(13) Section 6(1) was amended by paragraphs 4 and 7 of Schedule 15 to the Housing and Planning Act 2016.

(14) Section 7(1) was substituted by paragraphs 1 and 3 of Schedule 18 of the Housing and Planning Act 2016.

(15) Schedule A1 was inserted by paragraphs 1 and 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016.

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

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or air-space only—

- (a) Schedule 2A to the 1965 Act (counter-notice requiring purchase of land not in notice to treat) (as modified by article 33 (application of Part 1 of the 1965 Act));
- (b) Schedule A1 to the Compulsory Purchase (Vesting Declaration) Act 1981 (counter-notice requiring purchase of land not in general vesting declaration) (as modified by article 34 (application of the Compulsory Purchase (Vesting Declaration) Act 1981));
- (c) section 153(4A) of the 1990 Act⁽¹⁶⁾ (blighted land: proposed acquisition of part interest; material detriment test).

(4) Paragraphs (2) and (3) do not prevent Schedule 2A to the 1965 Act (as modified by article 33 (application of Part 1 of the 1965 Act)) from applying where the Agency acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

36.—(1) The Agency may enter upon and appropriate so much of the surface or subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised works and may use the surface, subsoil or airspace for those purposes or any other purpose ancillary to its undertaking.

(2) Subject to paragraph (3), the power under paragraph (1) may be exercised in relation to a street without the Agency 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 in respect of which the power of appropriation conferred by paragraph (1) is exercised without the Agency acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in the 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 of cost of necessary measures) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

⁽¹⁶⁾ Subsection (4A) was inserted by section 200 of the Housing and Planning Act 2016.