

SCHEDULE 18

Article 44

Acquisition of wayleaves, easements and other rights

PART 1

ON BEHALF OF LICENCE HOLDERS

Acquisition of necessary wayleaves

1.—(1) This paragraph applies where—

- (a) a licence holder has agreed in writing with the undertaker that it is necessary or expedient to remove an electric line within the Order limits and to install and keep installed an electric line in substitution for it on, under or over specified land;
- (b) the licence holder has agreed in writing that the undertaker may seek a necessary wayleave on behalf of the licence holder in respect of the specified land; and
- (c) the owner or occupier of the specified land, having been given a notice by the undertaker or the licence holder requiring him to give the necessary wayleave to the licence holder within a period (not being less than 21 days) specified in the notice—
 - (i) has failed to give the wayleave before the end of that period; or
 - (ii) has given the wayleave subject to terms and conditions to which the undertaker, following consultation with the licence holder, objects.

(2) Subject to sub-paragraphs (3) and (4) below, the Secretary of State may, on the application of the undertaker, himself grant the necessary wayleave to the licence holder subject to such terms and conditions as he thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

(3) The Secretary of State shall not entertain an application under sub-paragraph (2) above in any case where—

- (a) the specified land is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on; and
- (b) the line is to be installed on or over the specified land.

(4) Before granting the necessary wayleave to the licence holder, the Secretary of State shall afford—

- (a) the occupier of the specified land; and
- (b) where the occupier is not also the owner of the specified land, the owner, an opportunity of being heard by a person appointed by the Secretary of State.

(5) A necessary wayleave granted to the licence holder under this paragraph—

- (a) shall not be subject to the provisions of any enactment requiring the registration of interests in, charges over or other obligations affecting land; but
- (b) shall bind any person who is at any time the owner or occupier of the specified land.

(6) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for an electric line, he shall be deemed to have an interest in that land for the purposes of section 7 of the Mines (Working Facilities and Support) Act 1966.

(7) Where a wayleave is granted to a licence holder under this paragraph –

- (a) the occupier of the specified land; and

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(b) where the occupier is not also the owner of the specified land, the owner, may recover from the undertaker compensation in respect of the grant.

(8) Where in the exercise of any right conferred by such a wayleave any damage is caused to the specified land or to movables, any person interested in the specified land or movables may recover from the undertaker compensation in respect of that damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any land or movables he may recover from the undertaker compensation in respect of that disturbance.

(9) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.

(10) Any question of disputed compensation under this paragraph shall be determined by the Tribunal; and section 4 of the Land Compensation Act 1961 shall apply to any such determination.

Compulsory acquisition of easements or other rights

2.—(1) This paragraph applies where—

(a) a licence holder has agreed in writing with the undertaker that it is necessary or expedient to remove an electric line within the Order limits and to install and keep installed an electric line in substitution for it on, under or over specified land; and

(b) the licence holder has agreed in writing that the undertaker may seek an easement or other right in land on behalf of the licence holder in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker pursuant to sub-paragraph (1), the Secretary of State may authorise the relevant licence holder to purchase compulsorily an easement or right over the specified land where the Secretary of State is satisfied that it is required for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on.

(3) Part I (paragraphs 2 onwards) and Part II of Schedule 3 of the Electricity Act 1989 shall apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Unless otherwise agreed between the undertaker and the licence holder in writing, where the undertaker seeks a compulsory purchase order on behalf of a licence holder pursuant to this paragraph, the negotiation of consideration and compensation shall be undertaken by the undertaker and any consideration or compensation agreed or determined shall be payable by the undertaker and Schedule 3 of the Electricity Act 1989 as applied by this paragraph shall be interpreted accordingly.

Interpretation

3. In this Part of Schedule 18—

“dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part;

“licence holder” means a person holding a licence under section 6 of the Electricity Act 1989;

“necessary wayleave” means consent for the licence holder to install and keep installed the electric line on, under or over the specified land and to have access to the specified land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line;

“specified land” means the land within or outside the Order limits on, under or over which a licence holder agrees, pursuant to paragraph 1 or 2, that an electric line should be relocated in substitution for an existing electric line; and

“Tribunal” means the Upper Tribunal in relation to England and Wales.

PART 2

ON BEHALF OF CODE OPERATORS

Court imposition of code rights

4.—(1) This paragraph applies where—

- (a) a code operator has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove electronic communications apparatus owned by the code operator within the Order limits and to install and keep installed electronic communications apparatus in substitution for it on, under or over specified land;
- (b) the code operator has agreed in writing that the undertaker may seek code rights on behalf of the code operator in respect of the specified land, including all of the other terms of the agreement sought; and
- (c) the code operator or the undertaker has given the relevant person a notice in writing—
 - (i) setting out the code rights, and all of the other terms of the agreement sought, and
 - (ii) stating that the person’s agreement to those terms is sought.

(2) The undertaker may apply to the court for an order under this paragraph if the relevant person does not, before the end of 28 days beginning with the day on which the notice in sub-paragraph (1) (c) is given, agree to confer or be otherwise bound by the code rights.

(3) An order under this paragraph is one which imposes on the code operator and the relevant person an agreement between them which—

- (a) confers the code rights on the operator, or
- (b) provides for the code rights to bind the relevant person.

(4) Where the undertaker makes an application to the court under sub-paragraph (2), paragraph 21, 22, 23, 24 and 26 of Part 4 of Schedule 3A (The Electronic Communications Code) and Part 14 (Compensation under The Code) of the Communications Act 2003 shall apply as if:

- (a) reference to the making of an ‘order under paragraph 20’ were substituted for the making of an order under Schedule 18 of the Sizewell C (Nuclear Generating Station) Order 2022; and
- (b) unless otherwise agreed on a case-by-case basis in writing between the undertaker and the code operator, all references to ‘consideration’ or ‘compensation’ provided for in any agreement or order or otherwise to be determined shall be read as being payable by the undertaker.

Compulsory acquisition of easements or other rights

5.—(1) The undertaker may seek a compulsory purchase order on behalf of a code operator where—

- (a) the code operator has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove electronic communications apparatus owned by the operator within the Order limits and to install and keep installed electronic communications apparatus in substitution for it on, under or over specified land;
- (b) the code operator has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the code operator in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker pursuant to sub-paragraph (1), the Secretary of State may authorise the relevant code

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

operator to purchase compulsorily the specified land or an easement or right over the specified land if the Secretary of State is satisfied that it is required by the code operator—

- (a) for, or in connection with, the establishment or running of the code operator’s network; or
- (b) as to which it can reasonably be foreseen that it will be so required.

(3) Subject to sub-paragraph (4), paragraphs 3(2) to 3(7) of Schedule 4 of the Communications Act 2003 shall apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Unless otherwise agreed between the undertaker and the licence holder in writing, where the undertaker seeks a compulsory purchase order on behalf of a code operator pursuant to this paragraph, all negotiations of compensation shall be undertaken by the undertaker and any consideration or compensation agreed or determined in respect of any easements or rights acquired shall be payable by the undertaker and Schedule 4 of the Communications Act 2003 shall be interpreted accordingly as it applies to this paragraph.

Interpretation

6. In this paragraph, the following terms have the following meaning:

“code operator’s network” has the meaning given for ‘operator’s network’ in paragraph 6 of Schedule 3A of the Communications Act 2003

“code rights” has the meaning given in paragraph 3 of Schedule 3A of the Communications Act 2003;

“court” has the meaning given in paragraph 94 of Schedule 3A of the Communications Act 2003;

“electronic communications apparatus” has the meaning given in paragraph 5 of Schedule 3A of the Communications Act 2003;

“code operator” has the meaning given for an ‘operator’ in paragraph 2 of Schedule 3A of the Communications Act 2003;

“relevant person” means the person in respect of whose interest in land a code right is required;

“specified land” means the land within or outside the Order limits on, under or over which an operator agrees, pursuant to sub-paragraph (1), that electronic communications apparatus should be relocated in substitution for existing electronic communications apparatus.

PART 3

ON BEHALF OF WATER AND SEWERAGE UNDERTAKERS

Compulsory acquisition of easements or other rights

7.—(1) The undertaker may seek a compulsory purchase order on behalf of a water or sewerage undertaker where—

- (a) the water or sewerage undertaker has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove water or sewerage apparatus owned by the water or sewerage undertaker within the Order limits and to install and keep installed alternative apparatus in substitution for it on, under or over specified land;
- (b) the water or sewerage undertaker has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the water or sewerage undertaker in respect of the specified land.

(2) Subject to sub-paragraph (3), where a compulsory purchase order is sought by the undertaker pursuant to sub-paragraph (1), the Secretary of State may authorise the relevant water or sewerage undertaker to purchase compulsorily the specified land or an easement or right over the specified land where the Secretary of State is satisfied that it is required by the water or sewerage undertaker for the purposes of, or in connection with, the carrying out of its functions.

(3) Section 155(3) to (6) of the Water Industry Act 1991 shall apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Unless otherwise agreed between the undertaker and the water or sewerage undertaker in writing, where the undertaker seeks a compulsory purchase order on behalf of a water or sewerage undertaker pursuant to this paragraph, all negotiations of compensation shall be undertaken by the undertaker and any consideration or compensation agreed or determined in respect of any easements or rights acquired shall be payable by the undertaker.

(5) In this paragraph:

“alternative apparatus” means alternative water or sewerage apparatus adequate to enable the water or sewerage undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“specified land” means the land within or outside the Order limits on, under or over which a water or sewerage undertaker agrees, pursuant to sub-paragraph (1), that alternative apparatus should be relocated in substitution for existing relevant water or sewerage apparatus.

“water or sewerage undertaker” means ‘water undertaker’ or ‘sewerage undertaker’ as defined in the Water Industry Act 1991; and

“water or sewerage apparatus” means (i) mains, pipes or other water apparatus belonging to or maintained by a water undertaker for the purposes of water supply; and (ii) any drain or works vested in a sewerage undertaker, and any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of the Water Industry Act 1991 or an agreement to adopt made under section 104 of that Act, and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pimps, or other accessories forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus.

PART 4

ON BEHALF OF GAS TRANSPORTERS

Compulsory acquisition of easements or other rights

8.—(1) The undertaker may seek a compulsory purchase order on behalf of a gas transporter where—

(a) the gas transporter has agreed in writing with the undertaker that for the purpose of the authorised development it is necessary or expedient to remove gas apparatus owned by the gas transporter within the Order limits and to install and keep installed gas apparatus in substitution for it on, under or over specified land;

(b) the gas transporter has agreed in writing that the undertaker may seek an easement or other rights over land on behalf of the gas transporter in respect of the specified land.

(2) Subject to sub-paragraph (3) and (4), where a compulsory purchase order is sought by the undertaker pursuant to sub-paragraph (1), the Secretary of State may authorise the relevant gas transporter to purchase compulsorily an easement or right over the specified land.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(3) Schedule 3 of the Gas Act 1986 shall apply in respect of powers of compulsory purchase sought pursuant to this paragraph.

(4) Where the undertaker seeks a compulsory purchase order on behalf of a gas transporter pursuant to this paragraph, all negotiations of compensation shall be undertaken by the undertaker, unless otherwise agreed with the gas transporter, and any consideration or compensation agreed or determined in respect of any easements or rights acquired shall be payable by the undertaker only (unless otherwise agreed with the operator).

(5) In this paragraph—

“alternative apparatus” means alternative gas apparatus adequate to enable the gas transporter in question to fulfil its statutory functions in a manner not less efficient than previously;

“gas apparatus” means any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purpose of gas supply;

“gas transporter” has the meaning given in Part 1 of the Gas Act 1986; and

“specified land” means land within or outside the Order limits on, under or over which a gas transporter agrees, pursuant to sub-paragraph (1), that alternative apparatus should be relocated in substitution for existing gas apparatus.