
STATUTORY INSTRUMENTS

2024 No. 393

The National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

22.—(1) National Grid may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or is incidental to it.

(2) This article is subject to article 23 (compulsory acquisition of land – incorporation of the mineral code), article 24 (time limit for exercise of authority to acquire land and rights compulsorily), paragraph (3) of article 25 (compulsory acquisition of rights), articles 36 (temporary use of land by National Grid), 37 (temporary use of land by NPG) and 38 (temporary use of land by NGN).

Compulsory acquisition of land – incorporation of the mineral code

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

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”; and
- (c) for “undertaking” substitute “authorised development”.

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

24.—(1) After the end of the period of 5 years beginning on the day on which this Order is made (and subject to article 32 (Modification of Part 1 of the 1965 Act) and article 33 (Application of the 1981 Act))—

- (a) no notice to treat may be served under Part 1 of the 1965 Act (which makes provision for compulsory purchase under the Acquisition of Land Act 1981); and
- (b) no declaration may be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 33 (application of the 1981 Act).

(2) The authority conferred by articles 36 (temporary use of land by National Grid), 37 (temporary use of land by NPG) and 38 (temporary use of land by NGN) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker, NPG or NGN from 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.

(1) 1981 c. 67. Words substituted by the Coal Industry Act 1994 (c. 21) Schedule 9 paragraph 27(3).

Compulsory acquisition of rights

25.—(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 and detailed in Schedule 13 (land in which only new rights and restrictive covenants etc, may be acquired), by creating them as well as by acquiring rights and the benefits of restrictions already in existence.

(2) This article is subject to articles 36 (temporary use of land by National Grid), 37 (temporary use of land by NPG) and 38 (temporary use of land by NGN).

(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.

(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 other than in respect of the NGN Works or the NPG Works where no such consent is required.

(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.

Extinguishment and suspension of private rights

26.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition or the compulsory acquisition of rights or the imposition of restrictions under the Order (including those shown on the extinguishment of easements, servitudes and other private rights plan) shall be extinguished or suspended 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 land or 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; or
- (c) on the carrying out of any activity authorised by the Order which interferes with or breaches those rights,

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 carrying out 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 27 (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 and in so far as their continuation would be inconsistent with the exercise of the powers under this Order or a breach of a restriction as to the user of land arising by virtue of a contract.

(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 in accordance with the terms of section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) to be determined, in case of dispute, as if it were a 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 40 (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 and including restrictions as to the user of land arising by virtue of a contract.

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

27.—(1) This article applies to any Order land specified in Part 1 (National Grid), Part 2 (NPG) and Part 3 (NGN) of Schedule 11 (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 36 (temporary use of land by National Grid) or NPG takes temporary possession under article 37 (temporary use of land by NPG) or NGN takes temporary possession under article 38 (temporary use of land by NGN).

(2) All private rights or restrictive covenants in relation to apparatus belonging to National Grid, NPG or NGN removed from any land to which this article applies are extinguished from the date on which National Grid, NPG or NGN give up temporary possession of that land under articles 36(5) and 36(6), or 37(5) and 37(6), or 38(5) and 38(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 articles 36(5)(c) and 36(6)(c), or 37(5)(c) and 37(6)(c), or 38(5)(c) and 38(6)(c) (National Grid, NPG and NGN not required to remove foundations when giving up temporary possession).

(4) Schedule 11 (extinguishment of private rights and restrictive covenants relating to apparatus removed from land subject to temporary possession) has effect.

Power to override easements and other rights

28.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title from the undertaker or by any contractors, servants or agents of the undertaker) is authorised by this Order if it is done in accordance with the terms of this Order, 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 user of land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any 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 including restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the execution of works on or use of land acquired under that Act.

(5) Where a person deriving title under the undertaker by whom the land in question was acquired—

- (a) is liable to pay compensation by virtue of paragraph (4); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker in accordance with section 204(3) (compensation for overridden easements etc) of the 2016 Act.

(6) Nothing in this article is to be construed as authorising any act or omission on the part of any person which is actionable at the suit of any person on any grounds other than such an interference or breach as is mentioned in paragraph (1) of this article.

(7) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

Disregard of certain interests and improvements

29.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land or right over any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works carried out or improvement or alteration made on the relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the carrying out of the works or the making of the improvement or alteration as part of the authorised development was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) “relevant land” means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works constructed or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

Set-off for enhancement in value of retained land

30.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised development.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 25 (compulsory acquisition of rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised development.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2) as if this Order were a local enactment for the purposes of that Act.

No double recovery

31. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Modification of Part 1 of the 1965 Act

32.—(1) —Part 1 of the 1965 Act, as applied to this Order by section 125(2)(application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(3) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal

(2) Section 125 was amended by section 190 of, and paragraph 17, Schedule 16 of the Housing and Planning Act 2016 (c. 22).

(3) Section 4A(1) was inserted by Part 7, section 202(1) of the Housing and Planning Act 2016 (c. 22), subject to the transitional provisions specified in S.I. 2016/733 regulation 9.

challenges relating to applications for orders granting development consent)(4), the five year period mentioned in article 24 (time limit for exercise of authority to acquire land and rights compulsorily) of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024”.

(3) In section 11A(5) (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) 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 24 (time limit for exercise of authority to acquire land and rights compulsorily) of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024”.

(5) In Schedule 2A(6) (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 34 (acquisition of subsoil or airspace only) on the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, which excludes the acquisition of subsoil or airspace only from this schedule”;

(b) after paragraph 29, end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 20 (protective works to buildings), articles 36 (temporary use of land by National Grid), 37 (temporary use of land by NPG) and 38 (temporary use of land by NGN) or 39 (temporary use of land for maintaining the authorised development) of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024.”

Application of the 1981 Act

33.—(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 1 (application of Act) for subsection (2) substitute—

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

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

(5) Section 5A is omitted(7).

(6) 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.

(4) Section 118 was amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25 to, the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

(5) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22) subject to the transitional provisions specified in S.I. 2017/75 regulation 3.

(6) Schedule 2A was inserted by section 216(3) of, and paragraph 3 of Schedule 17 to, the Housing and Planning Act 2016 (c. 22), subject to the transitional provisions specified in S.I. 2017/75 regulation 5.

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

(7) In section 5B(1)(8) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118(f) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 24 (time limit for exercise of authority to acquire land and rights compulsorily) of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024”.

(8) In section 6(9) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(9) In section 7(10) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(10) In Schedule A1(11) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—

“(2) But see article 34(3) (acquisition of subsoil or airspace only) of the National Grid (Yorkshire Green Energy Enablement Project) Development Consent Order 2024, which excludes the acquisition of subsoil or airspace only from this Schedule.”

(11) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125(12) (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 32 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace only

34.—(1) The undertaker may compulsorily acquire so much of, or such rights, and impose such restrictions, in the subsoil of, or the air-space of, the land referred to in article 25 (compulsory acquisition of rights) and article 22 (compulsory acquisition of land) as may be required for any purpose for which that land may be acquired or for which rights over or under the land may be acquired under those provisions instead of acquiring the rights or imposing restrictions over the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, 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.

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 32 (modification of Part 1 of the 1965 Act));
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A)(c) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(8) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(9) Section 6 was amended by section 4 of, and paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(10) Section 7(1) was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(11) Schedule A1 was inserted by paragraphs 1 and 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(12) Section 125 was amended by section 216(3) of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

Use of subsoil under or airspace over streets

35.—(1) The undertaker may enter on and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or for any other purpose ancillary to the authorised development and may use the subsoil or airspace for those purposes.

(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⁽¹³⁾.

(5) Compensation is not payable under paragraph (4) to any person who is a statutory undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act⁽¹⁴⁾ 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

36.—(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 12 (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, archaeological artefact, 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 12, 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 must not, without the agreement of the owners of the land, remain in possession of any land under this article—

⁽¹³⁾ Part 1 was amended by S.I. 1994/2716, 1998 (c. 38), S.I. 1999/481, S.I. 2009/1307, S.I. 2010/490, S.I. 2017/1012 and 2016 (c. 9).

⁽¹⁴⁾ There are no amendments relevant to section 85 of the act.

- (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 12, 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), unless otherwise agreed with the owners of the land, 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, apparatus, equipment, archaeological artefact, 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 12 is concerned;
 - (c) remove any foundations to a depth greater than 1.5 metres below adjoining ground level which had been placed in that land to support pylons and electric lines constructed upon those foundations; 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 land or 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, apparatus, equipment, archaeological artefact, 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 12 is concerned;
 - (c) remove any foundations to a depth greater than 1.5 metres below adjoining ground level which had been placed in that land to support pylons and electric lines constructed upon those foundations; 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 12.

(13) The provisions of the Neighbourhood Planning Act 2017⁽¹⁵⁾ insofar as they relate to temporary possession of land under this article 36, article 37 (temporary use of land by NPG), 38 (temporary use of land by NGN) and article 39 (temporary use of land for maintaining the authorised development) of this Order do not apply in relation to the construction, operation and maintenance of the authorised development.

Temporary use of land by NPG

37.—(1) NPG may, in connection with the carrying out of the NPG works—

(a) enter on and take temporary possession of—

(i) so much of the land specified in column (1) of Part 2 of Schedule 12 (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 NPG 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, archaeological artefact, 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 12, or any other mitigation works.

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

(3) NPG must 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 12, 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) NPG 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), NPG must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but NPG is not required to—

- (a) replace a building, structure, archaeological artefact, 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 NPG works;
- (c) remove any foundations to a depth greater than 1.5 metres below adjoining ground level which had been placed in that land to support pylons and electric lines constructed upon those foundations;
- (d) remove any pylons or electric lines or underground cables constructed or installed on, over, under or in that land as part of the NPG Works or
- (e) 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 12 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, NPG 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 NPG is not required to—

- (a) replace a building, structure, archaeological artefact, 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 NPG works;
- (c) remove any foundations to a depth greater than 1.5 metres below adjoining ground level which had been placed in that land to support pylons and electric lines constructed upon those foundations; 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 12 is concerned.

(7) NPG 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 NPG takes possession of land under this article, NPG 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—

- (a) NPG from taking temporary possession more than once in relation to any land specified in Part 2 of Schedule 12; or
- (b) National Grid from taking temporary possession more than once in relation to any land specified in Schedule 12.

Temporary use of land by NGN

38.—(1) NGN may, in connection with the carrying out of the NGN works—

- (a) enter on and take temporary possession of—
 - (i) so much of the land specified in column (1) of Schedule 12 (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 NGN 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, plant, buildings, structures, pylons, archaeological artefact, apparatus, equipment 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 12, or any other mitigation works.

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

(3) NGN must 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 12, 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) NGN 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), NGN must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but NGN is not required to—

- (a) replace a building, structure, archaeological artefact, electric line, apparatus, equipment, 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 NGN 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 12 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, NGN 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 NGN is not required to—
- (a) replace a building, structure, archaeological artefact, electric line, apparatus, equipment, 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 NGN 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 12 is concerned.
- (7) NGN 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 NGN takes possession of land under this article, NGN 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 NGN from taking temporary possession more than once in relation to any land specified in Part 3 of Schedule 12; or
- (13) National Grid from taking temporary possession more than once in relation to any land specified in Schedule 12.

Temporary use of land for maintaining the authorised development

- 39.**—(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.

Statutory undertakers

40.—(1) Subject to the provisions of article 25 (compulsory acquisition of rights), Schedule 15 (protective provisions) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which Part 3 (street works in England and Wales) of the 1991 Act(16) applies.

Recovery of costs of new connections

41.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 40 (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

(16) 1991 c. 22. Part 3 was amended by 2004 (c. 18) perspective changes to Part 3 are still to come into force, S.I. 2007/1952, S.I. 2008/102 (w. 55) and 2003 (c. 21).

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 39 (temporary use of land for maintaining the authorised development), 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) (interpretation of Chapter 1) of the Communications Act 2003⁽¹⁷⁾; and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

⁽¹⁷⁾ Section 151 was implemented by Article 1, Section 2 and Schedule 1 of S.I. 2003/1900, Article 3 of S.I. 2003/3142; as amended by Schedule 1 of S.I. 2011/1210. There are other amendments to section 151 which are not relevant to this Order.