
WELSH STATUTORY INSTRUMENTS

2021 No. 1478

The Morlais Demonstration Zone Order 2021

PART 3

Acquisition and Possession of Land

Powers of acquisition

Power to acquire land

22. The undertaker may acquire compulsorily—

- (a) so much of the land shown on the onshore plan within the limits of deviation as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order (being land shown on the onshore plan and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

and may use any land so acquired for those purposes or for any other purposes that are ancillary to the authorised works and their operation.

Power to acquire new rights and impose restrictive covenants

23.—(1) The undertaker may acquire compulsorily such easements or other rights over land referred to in article 22 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) In the case of the land specified in columns (1) and (2) of the table in Part 1 of Schedule 6 (land in which only new rights may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (3) of that table.

(3) In the case of the land specified in columns (1) and (2) of the table in Part 2 (land over which restrictive covenants may be imposed) of Schedule 6 the undertaker's power under article 22 (power to acquire land) also includes power to impose restrictive covenants over the land for the purposes specified in relation to the land in column (3) of the table.

(4) Subject to—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(7) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights)); and
- (b) Schedule A1 to the 1981 Act (as modified by paragraph 7(7) of Schedule 7),

where the undertaker acquires a right over land or imposes a restrictive covenant under paragraph (1), (2) or (3), the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 7 has effect for the purpose of modifying the enactments relating to compensation, and the provisions of the 1965 Act and the 1981 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 restrictive covenant.

Application of Part 1 of the Compulsory Purchase Act 1965

24.—(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(1) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

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

(3) Omit section 4 (which provides a time limit for compulsory purchase of land).

(4) In section 4A(1)(2) (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 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 36 (time limit for exercise of powers of acquisition) of the Morlais Demonstration Zone Order 2021”.

(5) In section 11(1B)(3) (powers of entry), in a case where the notice to treat relates only to the acquisition of an easement or other right over land or the imposition of a restrictive covenant, for “3 months” substitute “1 month”.

(6) In section 11A(4) (powers of entry: further notices of entry)—

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

(7) 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 36 (time limit for exercise of powers of acquisition) of the Morlais Demonstration Zone Order 2021”.

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

- (a) paragraphs 1(2) and 14(2) substitute—
 - “(2) But see article 26(3) (Power to acquire subsoil only) of the Morlais Demonstration Zone Order 2021, which excludes the acquisition of subsoil only from this Schedule; and”
- (b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 28 (temporary use of land for construction of works) of the Morlais Demonstration Zone Order 2021.”

(1) 1981 c. 67.

(2) Inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(3) Subsection (1B) of section 11 was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.

(4) Inserted by section 186(3) of the Housing and Planning Act 2016.

(5) As inserted by section 199(1) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016.

Application of the 1981 Act

25.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(4) Omit section 5A(6) (time limit for general vesting declaration).

(5) In section 5B(1)(7) (extension of time limit during challenge) for “section 23 of the Acquisition of Land 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 36 (time limit for exercise of powers of acquisition) of the Morlais Demonstration Zone Order 2021”.

(6) In section 6(8) (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 14A(9) of the Transport and Works Act 1992”.

(7) 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)”.

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

“(2) But see article 26(3) (power to acquire subsoil only) of the Morlais Demonstration Zone Order 2021 which excludes the acquisition of subsoil only from this Schedule.”

(9) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied to the acquisition of land under article 22 (power to acquire land).

Power to Acquire Subsoil Only

26.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1)(a) or (b) of article 22 (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.

(2) Where the undertaker acquires any part of or rights in the subsoil of land under paragraph (1) it will not be 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 24 (application of Part 1 of the Compulsory Purchase Act 1965));

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act (as modified by article 25 (application of the 1981 Act)); and

(c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(6) Inserted by section 182(2) of the Housing and Planning Act 2016.

(7) Inserted by section 202(2) of the Housing and Planning Act 2016.

(8) As amended by 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.

(9) Inserted by S.I. 2017/16.

(10) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.

(11) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(4) Paragraphs (2) and (3) are to be disregarded where the undertaker acquires a cellar vault, arch or other construction forming part of a house, building or manufactory.

(5) Schedule 8 contains provision which in certain cases restricts the power under article 22 to the subsoil or under-surface of the land as lies more than 9 metres below the level of the surface.

Rights under or over streets

27.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the onshore Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised works.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) 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 undertaker 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 case of dispute, under Part 1 of the 1961 Act.

(4) 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.

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.