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STATUTORY INSTRUMENTS

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**2020 No. 325**

The Reinforcement to the North Shropshire  
Electricity Distribution Network Order 2020

PART 5

POWERS OF ACQUISITION

**Compulsory acquisition of rights: incorporation of the mineral code**

17. 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”.

**Compulsory acquisition of rights**

18.—(1) The undertaker may create and acquire compulsorily the rights in, under or over the Order land and impose the restrictions affecting the Order land described in the book of reference and shown on the land plans.

(2) Subject to section 8 (other provisions as to divided land) and Schedule 2A (counter-notice requiring purchase of land not in notice to treat) of the 1965 Act(2) (as substituted by paragraph 5(8) of Schedule 4 (modification of compensation and compulsory purchase enactments for creation of new rights)) and section 12 of the 1981 Act (divided land)(3), where the undertaker creates or acquires a right over land under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(3) Schedule 4 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 in, under or over land by the creation of a new right or imposition of a restriction.

(4) In any case where the creation and acquisition of rights or the imposition of a restriction under paragraph (1) is required for the purposes of diverting, replacing or protecting the apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to create and acquire such rights or impose such restrictions to the statutory undertaker in question.

(5) The exercise by a statutory undertaker of any power pursuant to a transfer under paragraph (4) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(6) Subject to the modifications set out in Schedule 4 of the 1965 Act the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the

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(1) 1981 c.67, amended by S.I. 2019/1307.

(2) Section 8 was amended and Schedule 2A substituted by the Housing and Planning Act 2016 c.22, section 199(1) and Schedule 17, paragraphs 1 and 2 and by S.I.2009/1307.

(3) Section 12 was amended by the Housing and Planning Act 2016, Schedule 18, paragraphs 1 and 5.

case of a compulsory acquisition under this Order in respect of a right by the creation of a new right as they apply to the compulsory purchase of land and interests in land.

### **Statutory authority to override easements and other rights**

**19.**—(1) The carrying out or use of the authorised development and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(2) of the 2008 Act (nuisance: statutory authority), despite it involving—

- (a) an interference with an interest or right to which this article applies; or
  - (b) a breach of a restriction as to use of land arising by virtue of contract.
- (2) The undertaker must pay compensation to any person whose land is injuriously affected by—
- (a) an interference with an interest or right to which this article applies; or
  - (b) a breach of a restriction as to use of land arising by virtue of contract,

caused by the carrying out or use of the authorised development and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Subsection (2) of section 10 of the 1965 Act (further provision as to compensation for injurious affection) applies to paragraph (2) by virtue of section 152(5) of the 2008 Act (compensation in case where no right to claim in nuisance).

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act must be applied to the construction of paragraph (2) with any necessary modifications.

### **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<sup>(4)</sup> (execution of declaration) as applied by article 22 (application of the 1981 Act).

(2) The authority conferred by article 26 (temporary use of land for carrying out the authorised development) 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.

### **Private rights**

**21.**—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory creation and acquisition of rights or the imposition of restrictions under the Order are to be suspended as is necessary to ensure the operation of the Order and insofar as their continuance would be inconsistent with the exercise of the right created and acquired or the burden of the restriction imposed—

- (a) as from the date of creation and acquisition of the right or the benefit of the restriction by the undertaker, whether compulsorily or by agreement, or

(4) Section 4 was amended by the Housing and Planning Act 2016, sections 184 and 185 and Schedule 18, paragraphs 1 and 2.

- (b) on the date of entry on the land by the undertaker under section 11(1)(5) of the 1965 Act (power of entry) in pursuance of the right,

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictive covenants save any such rights benefitting the undertaker over land of which the undertaker takes temporary possession under this Order are to be suspended and unenforceable for as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(3) Any person who suffers loss by the extinguishment or suspension of any private right or restrictive covenant under this Order is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article does not apply in relation to any right to which section 138 of the 2008 Act(6) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 29 (statutory undertakers) applies.

(5) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the creation and acquisition of rights or the imposition of restrictions over or affecting the land;

(ii) the undertaker's appropriation of that land;

(iii) the undertaker's entry onto that land; or

(iv) the undertaker's taking temporary possession of that land,

that any or all of those paragraphs do not apply to any right specified in the notice; and

(b) any agreement made at any time between the undertaker and the person in or to whom the right or restrictive covenant in question is vested or belongs.

(6) If any such agreement referred to in paragraph (5)(b)—

(a) is made with a person in or to whom the right or restrictive covenant 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.

(7) 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 and adversely affecting other land, including natural right to support and personal covenants.

### **Application of the 1981 Act**

**22.**—(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 1 (application of Act), for subsection (2) there is substituted—

“(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.”

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(5) Section 11 was amended by the Acquisition of Land Act 1981, section 34(1) Schedule 4; the Housing (Consequential Provisions) Act 1985 c. 71, section 3, Schedule 1, Part 1; the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) section 14, Schedule 5 paragraph 12(1) and S.I. 2009/1307.

(6) Section 138 was amended by the Growth and Infrastructure Act 2013 c. 27, section 23(1) and (4) and by S.I. 2017/1285.

- (4) In section 5 (earliest date for execution of declaration), in subsection 2, omit the words from “, and this subsection” to the end.
- (5) Omit section 5A (time limit for general vesting declaration).
- (6) In section 5B(1)(7) (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 118(8) of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
  - (b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 20 (time limit for exercise of authority to acquire rights compulsorily) of the Reinforcement to the North Shropshire Electricity Network Order 2020”.
- (7) 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(10) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7(11) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.
- (9) In Schedule A1(12) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—
- “(2) But see article 23(3) (acquisition of subsoil or airspace only) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 2020 which excludes the acquisition of subsoil or airspace only from this Schedule.”
- (10) References to the 1965 Act in the 1981 Act are to be construed as references to that Act as applied by section 125(13) (application of compulsory acquisition provisions) of the 2008 Act as modified by article 24 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of rights under this Order.

### **Acquisition of subsoil or airspace only**

- 23.—**(1) The undertaker may acquire compulsorily such rights in the subsoil of, or the airspace over, the land referred to in article 18 (compulsory acquisition of rights) as may be required for any purpose for which rights or restrictions over that land may be created and acquired or imposed under that provision instead of acquiring any greater interest in that land.
- (2) Where the undertaker acquires any rights in the subsoil of, or the airspace over, land under paragraph (1), the undertaker is to 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 and airspace only—
- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
  - (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

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(7) Section 5B was inserted by the Housing and Planning Act 2016, section 202(2).

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

(9) Section 6(1)(b) was amended by the Housing and Planning Act 2016 Schedule 15, paragraph 17.

(10) Section 134 was amended by the Localism Act 2011 sections 142 and 237 and Schedule 25, part 21 25 to and by [S.I. 2012/16](#) and [S.I. 2017/16](#).

(11) Section 7 was amended by the Housing and Planning Act 2016, section 199(2), and Schedule 18, paragraphs 1 and 3.

(12) Schedule A1 was inserted by the Housing and Planning Act 2016, Schedule 18 paragraph 6.

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

(c) Section 153(4A)(14) (reference of objection to the Upper Tribunal: general - blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) do not apply where the undertaker acquires a cellar, vault, arch, or other construction forming part of a house, building or manufactory or airspace above a house building or manufactory.

### **Modification of Part 1 of the 1965 Act**

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

(2) In section 4A(1)(15) (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), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire rights compulsorily) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 2020”.

(3) In section 11A(16) (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”.

(4) In section 22(2) (interests omitted from purchase), for “section 4 of this Act” substitute “article 20 (time limited for exercise of authority to acquire rights compulsorily) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 2020”.

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

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

“(2) But see article 23(3) (acquisition of subsoil or airspace only) of the Reinforcement to the North Shropshire Electricity Distribution Network Order 2020, which excludes the acquisition of subsoil or airspace only from this Schedule”

(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 26 (temporary use of land for carrying out the authorised development) or article 27 (temporary use of land for maintaining the authorised development) of The Reinforcement to the North Shropshire Electricity Distribution Network Order 2020.”

### **Rights under or over streets**

**25.**—(1) The undertaker may enter upon and appropriate 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 and may use the subsoil or airspace for those purposes.

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(14) Section 153(4A) was inserted by the Housing and Planning Act 2016, section 200(1) and (2).

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

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

(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) is not to 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 undertaker acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not to be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (sharing 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 for carrying out the authorised development**

**26.**—(1) Subject to article 20(2) (time limit for exercise of authority to acquire rights compulsorily) and subject to paragraphs (2) to (11), the undertaker 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 columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the part of the authorised development specified in column (4) 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 (powers of entry) (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the 1981 Act (execution of declaration);

- (b) remove any electric line, electrical plant, buildings, structures, poles, means of enclosure, apparatus and vegetation from that land;
- (c) construct temporary works (including the provision of means of access, gates, fences and other boundary structures) on that land and use that land as temporary laydown area, storage area and working area;
- (d) construct any works specified in relation to that land in column (3) of Schedule 5; and
- (e) carry out reinstatement works required pursuant to the requirements in Schedule 2 (requirements).

(2) Not less than 14 days before entering on 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.

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of final commissioning unless the undertaker has, before the end of that period, served notice of entry under section 11 of the 1965 Act or made a declaration under section 4(17) of the 1981 Act (execution of declaration) or has otherwise acquired the land subject to temporary possession.

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(17) Section 4 was amended by the Housing and Planning Act 2016, sections 184,185 and 199(2), and Schedule 18, paragraphs 1 and 2.

(4) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act or has otherwise acquired the rights over land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under either paragraph (1)(a)(i) or (1)(a)(ii), remove all temporary (including accesses to the public highway) and restore the land to the reasonable satisfaction of the owners of the land and any highway access to the reasonable satisfaction of the relevant highway authority; but the undertaker is not required to—

- (a) replace any electric line, electrical plant, buildings, structures, poles and apparatus removed under this article; or
- (b) restore the land on which any works have been carried out under paragraph (1)(d) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 2.

(5) 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 provisions of any power conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152(18) 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 (5).

(8) Nothing in this article precludes the undertaker from—

- (a) acquiring new rights or imposing restrictions on any part of the Order land under article 18 (compulsory acquisition of rights); or
- (b) acquiring any right in the subsoil or of airspace over the Order land under article 23 (acquisition of subsoil or airspace only).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire any interest in it.

(10) Section 13(19) 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) Nothing in this article prevents the taking of temporary possession more than once in relation to any land specified in Schedule 5.

(12) The provisions of Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017(20) do not apply insofar as they relate to temporary possession of land under this article.

(13) The undertaker may not rely on the power conferred by paragraph (1)(c) to construct any new means of access without the consent of Highways England where they are the relevant highway authority for the highway from which the access will be taken.

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(18) Section 152 was amended by [S.I. 2009/1307](#).

(19) Section 13 was amended by the Tribunals, Courts and Enforcement Act [2007 c.15](#), section 139(4) to (8), section 62(3) and Schedule 13, paragraphs 27, 28(1) to (3), and Schedule 23, Part 3.

(20) [2017 c.20](#).

### **Temporary use of land for maintaining the authorised development**

27.—(1) Subject to article 20(2) (time limit for exercise of authority to acquire rights compulsorily) and subject to paragraphs (2) to (10), at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter on 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 structures 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 on 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 only remain in possession of land under this article 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 (including accesses to the public highway) and restore the land to the reasonable satisfaction of the owners of the land and any highway access to the reasonable satisfaction of the relevant highway authority.

(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 provisions of this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to 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 to be required to acquire 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 period” in relation to any part of the authorised development means the period of 5 years beginning with the date of final commissioning.

(12) Paragraph (1) does not authorise the undertaker to construct or provide any new means of access unless the undertaker has obtained the consent of Highways England where they are the highway authority for the highway from which the access will be taken.

(13) The provisions of Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017 do not apply insofar as they relate to the temporary possession of land under this article.

### **Special category land**

**28.**—(1) Subject to the provisions of this article, so much of the special category land as will be required for the purposes of the exercising by the undertaker of the Order rights will be suspended from all rights, trusts and incidents to which it was previously subject—

- (a) as from the date of creation and 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 (power of entry) in pursuance of the right,

whichever is the earliest.

(2) So far as the temporary use of land under article 26 (temporary use of land for carrying out the authorised development) is concerned, the suspension in paragraph (1) is only for such time as the land is being used under that article.

(3) In this article—

“Order rights” means rights and powers exercisable over the special category land by the undertaker under article 18 (compulsory acquisition of rights), article 26 (temporary use of land for carrying out the authorised development); and

“the special category land” means the land numbered 2, 3 and 4 identified as forming part of a common, open space, or fuel or field allotment in the book of reference and on the land plans.

### **Statutory undertakers**

**29.**—(1) Schedule 6 (protective provisions) has effect.

(2) Subject to the provisions of Schedule 6, the undertaker may—

- (a) extinguish or suspend the rights of, remove or reposition the apparatus belonging to, statutory undertakers shown on the land plans and described in the book of reference; and
- (b) create and acquire compulsorily the rights or impose restrictions over land belonging to statutory undertakers shown on the land plans and described in the book of reference.

### **Recovery of costs of new connections**

**30.**—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is to be 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 29 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 to be 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—

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

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