
STATUTORY INSTRUMENTS

2012 No. 1924

TRANSPORT AND WORKS, ENGLAND

**The Hinkley Point (Temporary Jetty)
(Land Acquisition) Order 2012**

Made - - - - 20th July 2012
Coming into force - - 12th August 2012

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006⁽¹⁾ for an Order under sections 3 and 5 of the Transport and Works Act 1992⁽²⁾ (“the 1992 Act”).

Objections to that application have been withdrawn.

The Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act.

The Secretary of State, having considered the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 20th July 2012.

The Secretary of State in exercise of the powers conferred by sections 3 and 5 of, and paragraphs 3 to 5, 7, 8, 11 and 16 of Schedule 1 to, the 1992 Act, makes the following Order:—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Hinkley Point (Temporary Jetty) (Land Acquisition) Order 2012 and comes into force on 12th August 2012.

(1) S.I. 2006/1466.

(2) 1992 c. 42. Part 1 of this Act is amended by S.I. 1995/1541, 1998/2226, 2000/3199 and 2006/958.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961⁽³⁾;

“the 1965 Act” means the Compulsory Purchase Act 1965⁽⁴⁾;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“the Company” means NNB Generation Company Limited, a company incorporated in England with registered number 06937084;

“the HEO” means the Hinkley Point (Temporary Jetty) Harbour Empowerment Order 2012⁽⁵⁾;

“the land plan” means the plans certified by the Secretary of State as the land plans for the purposes of this Order;

“the tribunal” means the Upper Tribunal;

“the undertaking” means the harbour undertaking of the Company as authorised by the HEO; and

“the works” means the works authorised by the HEO.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space over its surface.

(3) All measurements stated in any description of lands in the book of reference are approximate.

PART 2

ACQUISITION OF LAND

Power to acquire land

3. The Company may acquire compulsorily so much of the land shown coloured pink and edged red on the land plan and described in the book of reference, or such estates, interests, easements, or other rights in or over the land (save for the freehold or any other interest of the Environment Agency in the land referred to on the land plan under reference TWA_1 (and so described in the book of reference)), as may be required for the purposes of the works and it may use any land so acquired for those purposes or for any other purposes ancillary to the undertaking.

Application of Part 1 of the Compulsory Purchase Act 1965

4.—(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⁽⁶⁾ applies; and

(b) as if this Order were a compulsory purchase order made under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

(3) 1961 c. 33.

(4) 1965 c. 56.

(5) S.I. 2012/1914.

(6) 1981 c. 67.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

5.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(7) applies as if this Order were a compulsory purchase order.

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

(3) In section 3 (preliminary notices) for subsection (1) there is substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than to a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

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

(8) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 3 (power to acquire land).

Power to acquire new rights

6.—(1) The Company may acquire compulsorily such easements or other rights over any land referred to in article 3 (power to acquire land) as may be required for any purpose for which that land may be acquired by it under that article, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 1 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the Company acquires a right over land under paragraph (1) it is not required to acquire a greater interest in that land.

(3) Schedule 1 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.

Disregard of certain interests and improvements

7.—(1) In assessing the compensation (if any) payable to any person on the acquisition from that person of 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 executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration 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 executed or the improvement or alteration made, directly or indirectly concerned.

Set-off for enhancement in value of retained land

8.—(1) In assessing the compensation payable to any person in respect of the acquisition from him under this Order of any land (including the subsoil) the tribunal shall 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 him by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from him of any new rights over land (including the subsoil) under article 6 (power to acquire new rights), the tribunal shall 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 him by reason of the construction of the authorised works.

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

Extinction of private rights of way

9.—(1) All private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by the Company, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Company under section 11(1) of the 1965 Act,

whichever is sooner.

(2) All private rights of way over land owned by the Company which, being within the limits of land which may be acquired shown on the land plan, are required for the purposes of the works or the undertaking are extinguished on the appropriation of the land for any of those purposes by the Company.

(3) Any person who suffers loss by the extinguishment of any private right of way under this article 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 of way to which section 271 or 272 of the Town and Country Planning Act 1990(8) (extinguishment of rights of statutory undertakers etc.) applies.

(8) 1990 c. 8.

Time limit for exercise of powers of acquisition

10. After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 4 (application of Part 1 of the Compulsory Purchase Act 1965); and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 5 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

PART 3

MISCELLANEOUS AND GENERAL

Certification of plans, etc.

11. The Company must, as soon as practicable after the making of this Order, submit copies of the book of reference and the land plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference and land plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Statutory undertakers, etc.

12. The provisions of Schedule 2 (provisions relating to statutory undertakers, etc.) have effect.

Service of notices

13.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978⁽⁹⁾ as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(9) 1978 c. 30.

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
 - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
 - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not exclude the employment of any method of service not expressly provided for by it.
- (10) In this article “electronic transmission” means a communication transmitted—
- (a) by means of an electronic communications network; or
 - (b) by other means but while in electronic form.

No double recovery

14. 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.

Arbitration

15. Any difference under any provision of this Order, unless otherwise provided for, is to be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State for Energy and Climate Change

20th July 2012

Giles Scott
Head of National Infrastructure Consents

SCHEDULES

SCHEDULE 1

Article 6

Modification of Compensation and Compulsory Purchase Enactments for Creation of New Rights

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973⁽¹⁰⁾ has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there are substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there are substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there are substituted the words “a right over land consisting”;
- (b) for the word “severance” there are substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there are substituted the words “right proposed”; and
- (d) for the words “part is” there are substituted the words “right is”.

Application of the 1965 Act

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or
- (b) the land over which the right is or is to be exercisable.

⁽¹⁰⁾ 1973 c. 26.

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(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Upper Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that interest, and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Hinkley Point (Temporary Jetty) (Land Acquisition) Order 2012⁽¹¹⁾ (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);

⁽¹¹⁾ S.I. 2012/1924.

- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 2

Article 12

Provisions relating to Statutory Undertakers, etc.

1. Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers, etc. and power of statutory undertakers, etc. to remove or re-site apparatus) apply in relation to any land acquired or appropriated by the Company under this Order; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) have effect accordingly.

2. In the provisions of the 1990 Act, as applied by paragraph 1, references to the appropriate Minister are references to the Secretary of State.

3. Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by paragraph 1, 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 Company 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.

4. Paragraph 3 does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

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- (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 Company 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 sewage disposal plant.

5. The provisions of the 1990 Act mentioned in paragraph 1, as applied by that paragraph, do not have effect in relation to apparatus as respects which Part 3 of the New Roads and Street Works Act 1991(12) applies.

6. In this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990(13);

“owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981(14);

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(15); and

“public utility undertakers” has the same meaning as in the Highways Act 1980(16).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers powers on NNB Generation Company Limited (“the Company”) for the compulsory acquisition of land and rights in or over land adjacent to Bridgwater Bay in the district of West Somerset. The land is required for the purpose of the construction of a harbour comprising a jetty and harbour related works which are authorised to be constructed under powers conferred on the Company by the Hinkley Point (Temporary Jetty) Harbour Empowerment Order 2012 made under section 16 of the Harbours Act 1964. The harbour will facilitate the construction of a nuclear power station at Hinkley Point subject to the appropriate consents being granted. The Order does not authorise the construction of works or any other development.

A copy of the land plan and the book of reference referred to in the Order may be inspected at the offices of the Company at 14 King Square, Bridgwater, Somerset TA6 3DG.

(12) 1991 c. 22.

(13) 1990 c. 8.

(14) 1981 c. 67.

(15) 2003 c. 21.

(16) 1980 c. 66.