
STATUTORY INSTRUMENTS

2017 No. 766

The Wrexham Gas Fired Generating Station Order 2017

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

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

(2) This article is subject to article 18 (compulsory acquisition of rights etc), article 22 (acquisition of subsoil only) and article 26 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of rights etc

18.—(1) The undertaker may acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights and impose the restrictions described in the book of reference and shown on the land plans.

(2) Subject to section 8 of the 1965 Act (provisions as to divided land) where the undertaker creates or 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.

(3) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) 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.

(4) In any case where the creation and acquisition of new 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 in accordance with 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 7 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions) the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

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

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

(3) Section 5 (earliest date for execution of declaration) is omitted.

(4) Section 5A (time limit for general vesting declaration) is omitted.

(5) In section 5B (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 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 4” substitute “the five year period mentioned in article 20 of the Wrexham Gas Fired Generating Station Order 2017”.

(6) 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.

(7) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 must be construed as references to that Act as applied by section 125 of the 2008 Act (as modified by article 23 (application of Part 1 of the Compulsory Purchase Act 1965)) to the compulsory acquisition of land under this Order.

Time limit for exercise of authority to acquire land compulsorily

20.—(1) After the end of the period of 5 years beginning on the day on which the 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 Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 19 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

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

Statutory authority to override easements and other rights

21.—(1) The carrying out or use of the authorised development or any other development necessary for the authorised development that takes place within the Order land and the doing of anything else authorised by this Order is authorised for the purpose specified in section 158(1) of the 2008 Act (nuisance: statutory authority), 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 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,

(1) 1981 c.66.

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 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 applies to the construction of paragraph (2) (with any necessary modifications).

Acquisition of subsoil only

22.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1) of article 17 (compulsory acquisition of land) and paragraph (1) of article 18 (compulsory acquisition of rights etc) as may be required for any purpose for which that land or rights or restrictions over that land may be created and acquired or imposed 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), the undertaker is not to be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 23 (application of Part 1 of the Compulsory Purchase Act 1965) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Application of Part 1 of the Compulsory Purchase Act 1965

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

(2) In section 4A(1) (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 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 4” substitute “the five year period specified in article 20 of the Wrexham Gas Fired Generating Station Order 2017”.

(3) 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 20 of the Wrexham Gas Fired Generating Station Order 2017”.

(4) In Schedule 2A—

- (a) omit paragraphs 1(2) and 14(2); and
- (b) at the end 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 Wrexham Gas Fired Generating Station Order 2017.”.

Private rights

24.—(1) Subject to the provisions of this article, all private rights and restrictions over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land 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),

whichever is the earliest.

(2) Subject to the provisions of this article, all private rights and restrictions over land subject to the compulsory acquisition of rights or imposition of restrictions under this Order are suspended and unenforceable or, where so notified by the undertaker, extinguished in so far as in either case their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of acquisition of the right 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.

(3) Subject to the provisions of this article, all private rights and restrictions over land owned by the undertaker are extinguished on commencement of any activity authorised by this Order which interferes with or breaches such rights or restrictions.

(4) Subject to the provisions of this article, all private rights or restrictions over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for so 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.

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

(6) 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 28 (statutory undertakers) applies.

(7) Paragraphs (1), (4) and (5) is to have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the creation and acquisition of rights or the imposition of restrictions over land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's temporary possession of it,

that any or all of those paragraphs are not to 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 restriction in question is vested, belongs or benefits.

(8) If any such agreement as is referred to in paragraph (7)(b)—

- (a) is made with a person in or to whom the right or restriction is vested, belongs or benefits; 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.

(9) References in this article to private rights and restrictions over land includes any trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

Rights under or over streets

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

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) 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) 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) The undertaker must repair and make good at its own expense and to the reasonable satisfaction of the street authority any damage caused to a street or to any bridge apparatus, highway structure or street furniture in the street belonging to the street authority by virtue of its occupation and appropriation of the subsoil of, or airspace over, the street under this article.

(5) Subject to paragraph (6), 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.

(6) Compensation is not payable under paragraph (5) 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) The undertaker may in connection with the carrying out of the authorised development or any other development necessary for the authorised development that takes place within the Order land—

- (a) enter on and take possession of—
 - (i) so much of the land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; or
 - (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 Compulsory Purchase (Vesting Declarations) Act 1981 (execution of declaration);
- (b) remove any buildings, fences, debris 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 (3) of Schedule 8 (land of which temporary possession may be taken), or any other mitigation works.
- (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—
- (a) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of final commissioning of the authorised development; 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 final commissioning of the authorised development 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 of the Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession.
- (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 Compulsory Purchase (Vesting Declarations) Act 1981 or has otherwise acquired the land subject to temporary possession, the undertaker must before giving up possession of land of which temporary possession has been taken under this article, remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land but the undertaker is not to be required to replace a building or any debris removed under this article.
- (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 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 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).
- (9) Nothing in this article precludes the undertaker from—
- (a) creating and acquiring new rights or imposing restrictions over any part of the Order land identified in part 1 of the book of reference under article 18 (compulsory acquisition of rights etc); or
 - (b) acquiring any right in the subsoil of any part of the Order land identified in part 1 of the book of reference under article 22 (acquisition of subsoil only) or article 25 (rights under or over streets).
- (10) Where the undertaker takes possession of land under this article, the undertaker is not to be 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 the taking of temporary possession more than once in relation to any land specified in Schedule 8 (land of which temporary possession may be taken).

Temporary use of land for maintaining the authorised development

27.—(1) Subject to paragraph (2), 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; and
- (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.

(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 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 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 10(2) of the 1965 Act (further provisions as to compensation for injurious affection) 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 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 period” means the period of 5 years beginning with the date of final commissioning.

Statutory Undertakers

28. Subject to the provisions of Schedule 9 (protective provisions), the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order land;
- (b) extinguish or suspend the rights of or restrictions for the benefit of, and remove or reposition the apparatus belonging to, statutory undertakers on, under, over or within the Order land; and
- (c) create and acquire compulsorily the rights and/or impose restrictions over any Order land belonging to statutory undertakers.

Apparatus and rights of statutory undertakers in streets

29. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (power to alter layout, etc. of streets), or article 11 (temporary prohibition or restriction of use of streets) any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus, subject to Schedule 9 (protective provisions), as if this Order had not been made.

Recovery of costs of new connection

30.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 28 (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 28 (statutory undertakers) any person who is—

- (a) the owner or occupier of premises the drains of which communicated with the 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) This article does not have effect in relation to apparatus to which article 29 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

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

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