
STATUTORY INSTRUMENTS

2020 No. 1075

The Great Yarmouth Third River Crossing
Development Consent Order 2020

PART 5

POWERS OF ACQUISITION AND POSSESSION OF LAND

Powers of Acquisition

Compulsory acquisition of land

25.—(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 28 (compulsory acquisition of rights), article 33 (acquisition of subsoil or airspace etc., only) and article 35 (temporary use of land for constructing the authorised development).

Compulsory acquisition of land – incorporation of the mineral code

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

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

Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily

27.—(1) 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 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act as modified by article 31 (modification of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4(2) (execution of declaration) of the 1981 Act as applied by article 32 (application of the 1981 Act),

in relation to any part of the Order land.

(2) The authority conferred by article 35 (temporary use of land for constructing the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the undertaker from remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

(1) 1981 c. 67. Part 3 was amended by section 46 of the Criminal Justice Act 1982 (c. 48) and S.I. 2009/1307.

(2) Section 4 was amended by sections 184, 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

Compulsory acquisition of rights

28.—(1) Subject to the following paragraphs of this article, the undertaker may acquire such rights over the Order land or impose such restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, as may be required for any purpose for which that land may be acquired under article 25 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in columns (1) and (2) of Schedule 6 (land in which only new rights may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition under paragraph (1) of such wayleaves, easements, new rights over the land or the imposition of such restrictive covenants as the undertaker may require for or in connection with the authorised development, or to facilitate it or as is incidental to it, for the purposes specified in column (3) of Schedule 6 in relation to that land.

(3) The power under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Schedule 6 for the benefit of statutory undertakers or for the benefit of any other person—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 6 as may be required for the benefit of any other statutory undertaker or any other person; and
- (b) must not be exercised in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 6 as are required for the benefit of any other statutory undertaker or any other person.

(4) Subject to section 8(3) (other provisions as to divided land) of, and Schedule 2A(4) (counter-notice requiring purchase of land not in notice to treat) to, the 1965 Act (as substituted by paragraph 97(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for the creation of new rights)), where the undertaker acquires a right over land or the benefit of a restrictive covenant under paragraph (1) or (2) the undertaker is not required to acquire a greater interest in that land.

(5) Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights) has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application 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.

Private rights over land

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

- (a) from the date of acquisition of the land by the undertaker, whether compulsorily or by agreement;
- (b) on the date of entry onto land by the undertaker under section 11(1)(5) (powers of entry) of the 1965 Act; or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earlier.

(3) Section 8 was amended by paragraphs 1 and 2 of Schedule 17 to the Housing and Planning Act 2016 and [S.I. 2009/1307](#).

(4) Schedule 2A was inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016.

(5) Section 11(1) was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1) and sections 186(1) and (2), 187 and 188 of the Housing and Planning Act 2016 (c. 22).

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement;
- (b) on the date of entry onto land by the undertaker under section 11(1) of the 1965 Act; or
- (c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over any part of the Order land that is vested in or acquired by the undertaker are extinguished on the commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which the undertaker takes temporary possession under this Order are suspended and unenforceable for as long as the undertaker remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or by the imposition of any restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152(6) (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138(7) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 37 (statutory undertakers and utilities) applies.

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

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of the restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of it;
 - (iii) the undertaker's entry onto it; or
 - (iv) the undertaker's taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
 - (b) any agreement evidenced in writing and made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.
- (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 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.

(9) References in this article to private rights over land include any right of way, trust, incident, easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land,

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

(7) Section 138 was amended by section 23(1) and (4) of the Growth and Infrastructure Act 2013 (c. 27) and [S.I. 2017/1285](#).

including any natural right to support and include restrictions as to the user of land arising by virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

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

- (a) an interference with an interest or right to which this article applies; or
- (b) a breach of a restriction as to the user of land arising by virtue of contract.

(2) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

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

- (a) is payable under section 7 (measure of compensation in case of severance) or section 10(8) (further provision as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections where—
 - (i) the compensation is to be estimated in connection with a purchase under that Act; or
 - (ii) the injury arises from the construction of works on or use of land acquired under that Act.

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

- (a) is liable to pay compensation by virtue of paragraph (3); and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

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

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

- (a) the erection, construction or maintenance of any part of the authorised development;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land as is required for the authorised development, or to facilitate it, or as is incidental to it (including the temporary use of land).

Modification of Part 1 of the 1965 Act

31.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) 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)(9) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to

(8) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(9) Section 4A was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 27 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the Great Yarmouth Third River Crossing Development Consent Order 2020”.

(3) In section 11A(10) (powers of entry: further notice 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) (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 27 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the Great Yarmouth Third River Crossing Development Consent 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 33(4) (acquisition of subsoil or airspace etc., only) of the Great Yarmouth Third River Crossing Development Consent Order 2020, which excludes the acquisition of subsoil or airspace 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 articles 21 (protective works to buildings), 22 (authority to survey and investigate land), 35 (temporary use of land for constructing the authorised development) or 36 (temporary use of land for maintaining the authorised development) of the Great Yarmouth Third River Crossing Development Consent Order 2020.”.

Application of the 1981 Act

32.—(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) substitute—

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

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

(5) Omit section 5A(11) (time limit for general vesting declaration).

(6) In section 5B(12) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118(13) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 27 (time limit for the exercise of powers to possess land temporarily or acquire land compulsorily) of the Great Yarmouth Third River Crossing Development Consent Order 2020”.

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

(11) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

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

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

(7) In section 6(14) (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(15) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7(16) (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(17) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 33(4) (acquisition of subsoil or airspace etc., only) of the Great Yarmouth Third River Crossing Development Consent 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 the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (as modified by article 31 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil or airspace etc., only

33.—(1) The undertaker may acquire compulsorily so much of, or such rights over, the subsoil beneath, or the surface of, or the airspace above, the land referred to in paragraph (1) of article 25 (compulsory acquisition of 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) In the case of the Order land specified in columns (1) and (2) of Schedule 8 (land in which only airspace and new rights may be acquired) the undertaker’s powers of compulsory acquisition under article 25 (compulsory acquisition of land) are limited to—

- (a) the acquisition of such airspace; and
- (b) the acquisition of such easements or other new rights and the imposition of such restrictive covenants over the airspace and the surface of the land,

as the undertaker may require for or in connection with the authorised development.

(3) Where the undertaker acquires any part of, or rights over, the subsoil beneath, or the surface of, or the airspace over land referred to in paragraphs (1) or (2), the undertaker is not required to acquire an interest in any other part of the land.

(4) The following do not apply in connection with the exercise of the powers under paragraphs (1) and (2) 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 31 (modification of Part 1 of the 1965 Act);
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A)(18) (blighted land; proposed acquisition of part interest; material detriment test) of the 1990 Act.

(5) Paragraphs (3) and (4) are to be disregarded 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.

(14) Section 6 was 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.

(15) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2017/16.

(16) Section 7(1) was inserted by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.

(17) Schedule A1 was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

(18) Section 153(4A) was inserted by section 200(2) of the Housing and Planning Act 2016 (c. 22).

(6) References in paragraph (2)(a) to airspace are references to the airspace lying at and above the heights specified in column (3) of Schedule 8, which are heights above Ordnance Datum and references in paragraph (2)(b) to airspace are references to the airspace lying below the airspace referenced in paragraph (2)(a).

Rights over or under streets

34.—(1) The undertaker may enter on, appropriate and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development or to facilitate it or as is incidental to it.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land 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 as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is an undertaker to whom section 85 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary possession of land

Temporary use of land for constructing the authorised development

35.—(1) The undertaker may, in connection with the construction of the authorised development but subject to article 27(2) (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 9 (land of which only 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 of the Order land in respect of which no notice of entry has been served under section 11(19) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(20) (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from the land referred to in sub-paragraphs (a)(i) to (ii);

(19) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing Consequential Provisions Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measures 2006 (2006 No.1), sections 186(1) and (2), 187(1) and (2) and 188 of the Housing and Planning Act 2016 and S.I. 2009/1307.

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

- (c) construct temporary works (including the provisions of means of access) and buildings on the land referred to in sub-paragraphs (a)(i) to (ii); and
- (d) construct any works on the land referred to in sub-paragraphs (a)(i) to (ii) as are mentioned in Schedule 1 (authorised development).

(2) 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 and that notice must state the works, facilities or other purpose for which the undertaker intends to take possession 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 any land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 9; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii) after the end of the period of one year beginning with the date of completion of the works, use of facilities or other purpose for which temporary possession of the land was taken unless the undertaker has, by the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to that land.

(4) 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; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development; or
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development.

(5) Any person who suffers loss as a result of the suspension of any private right of navigation under this article is entitled to be paid compensation for such loss by the undertaker, to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(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, must be determined under Part 1 of the 1961 Act.

(8) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the construction of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13(21) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory

(21) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

Temporary use of land for maintaining the authorised development

36.—(1) Subject to paragraph (3), at any time during the maintenance period relating to any of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits if possession is reasonably required for the purpose of maintaining the authorised development;
- (b) enter on any land within the Order limits for the purpose of gaining such access as is reasonably required for the purpose of maintaining the authorised development; and
- (c) 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 upon and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land and that notice must state the purpose for which the undertaker intends to take possession of the land including the particulars of the part of the authorised development for which possession is to be taken.

(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) Any person who suffers loss as a result of the suspension of any private right of navigation under this article is entitled to be paid compensation for such loss by the undertaker, to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(8) Any dispute as to a person's entitlement to compensation under paragraph (7), or as to the amount of the compensation, must be determined under Part 1 of the 1961 Act.

(9) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (7).

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

(11) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.

(12) 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 on which—

- (a) that part of the authorised development is first opened for public use (where that part of the authorised development is intended to be used by the public); or
- (b) in respect of any other part of the authorised development, that part is first brought into operational use by the undertaker.

Supplementary

Statutory undertakers and utilities

37.—(1) Subject to the provisions of article 28 (compulsory acquisition of rights), Schedule 14 (protective provisions) and paragraph (2), the undertaker may—

- (a) exercise the powers conferred by articles 25 (compulsory acquisition of land) and 28 (compulsory acquisition of rights) in relation to so much of the Order land as belongs to statutory undertakers; and
- (b) extinguish the rights of, or remove or reposition the apparatus belonging to, statutory undertakers over or within the Order land.

(2) Paragraph (1)(b) has no effect in relation to apparatus in respect of which the following provisions apply—

- (a) Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) article 38 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

38.—(1) Where a street is stopped up under article 14 (permanent stopping up of streets and private means of access), any statutory utility whose apparatus is under, in, on, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this article, as if this Order had not been made.

(2) Where a street is stopped up under article 14 any statutory utility whose apparatus is under, in, on, over, along or across the street may, and if reasonably requested to do so by the undertaker must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

(3) Subject to the following provisions of this article, the undertaker must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the carrying out of the relocation works.

(4) If in the course of the carrying out of relocation works under paragraph (2)—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the carrying out of the

relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which, apart from this paragraph, would be payable to the statutory utility by virtue of paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph (3) (and having regard, where relevant, to paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Paragraphs (3) to (6) do not apply where the authorised development constitutes major highway works, major bridge works or major transport works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this article—

“relocation works” means work carried out, or apparatus provided, under paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) (interpretation) of the Communications Act 2003.

Recovery of costs of new connection

39.—(1) Where any apparatus of a statutory utility is removed under article 37 (statutory undertakers and utilities) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker 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 37, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(3) This article does not have effect in relation to apparatus to which article 38 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

Compensation

Disregard of certain interests and improvements

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

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

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

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

Set off for enhancement in value of retained land

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

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 28 (compulsory acquisition of rights), the tribunal must set off against the value of the rights so acquired—

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

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

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

No double recovery

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