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STATUTORY INSTRUMENTS

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**2020 No. 1099**

**The Southampton to London Pipeline  
Development Consent Order 2020**

**PART 5**

**POWERS OF ACQUISITION AND POSSESSION OF LAND**

**Compulsory acquisition of land**

**21.**—(1) The undertaker may acquire compulsorily so much of the Order land described in the book of reference and shown on the land plans as is required for the authorised development or is incidental to it or required to facilitate it.

(2) This article is subject to—

- (a) article 23 (compulsory acquisition of rights and restrictive covenants);
- (b) article 24 (time limit for exercise of authority to acquire land compulsorily); and
- (c) article 30 (temporary use of land for carrying out the authorised development).

(3) Nothing in this article authorises the acquisition of an interest which is for the time being held by or on behalf of the Crown.

**Compulsory acquisition of land – incorporation of the mineral code**

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

- (a) paragraph 8(3) is not incorporated;
- (b) for “the acquiring authority” substitute “the undertaker”;
- (c) for “undertaking” substitute “authorised development”; and
- (d) for “compulsory purchase order” substitute “this Order”.

**Compulsory acquisition of rights and restrictive covenants**

**23.**—(1) Subject to the provisions of this article, the undertaker may acquire compulsorily the rights, and impose the restrictions, over the Order land, except for Ministry of Justice Land, described in the book of reference and shown on the land plans, by creating them as well as by acquiring rights and the benefits of restrictions already in existence.

(2) Subject to section 8 of the 1965 Act (other provisions as to divided land), as modified by Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of restrictive covenants), where the undertaker 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.

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(1) 1981 c. 67.

(3) Schedule 6 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 and acquisition of a new right or the imposition of a restriction.

(4) In any case where the acquisition of rights or the imposition of a restriction under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker, the undertaker may, with the consent of the Secretary of State, transfer the power to 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) Nothing in this article authorises the acquisition of rights over, or the imposition of restrictions affecting, an interest which is for the time being held by or on behalf of the Crown.

#### **Time limit for exercise of authority to acquire land compulsorily**

24.—(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 is to be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 27 (application of the 1981 Act).

(2) The authority conferred by article 30 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except 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 over land**

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

- (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 earlier.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land owned by the undertaker which, being within the Order limits, is required for the purposes of this Order, are extinguished on the commencement of any activity authorised by this Order which interferes with or breaches such rights or such restrictive covenants.

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

- (a) as from the date of the 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 in pursuance of the right;

whichever is the earlier.

(4) Subject to the provisions of this article, all private rights or restrictive covenants 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 restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 of the 2008 Act 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 34 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) 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 over or the imposition of the restrictive covenant 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 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 trust, incident, easement, wayleave, 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 virtue of a contract, agreement or undertaking having that effect.

(10) Nothing in this article affects any private rights or restrictions over or affecting the Order land, or apparatus which is on, under or over the Order land, which are—

(a) for the benefit of, or

(b) exercisable by; or

(c) owned by,

the undertaker or its successors in title from time to time, but, subject to paragraphs (7) and (8), not so as to preserve the interest (if any) of another person who enjoys the benefit of, or who exercises or owns any such rights or restrictions in common with the undertaker.

(11) Where a nationally significant infrastructure project is proposed to be constructed by a person other than the undertaker on, over or under the Order land—

(a) sections 127(2) to (6) (statutory undertakers' land) apply to land (as defined by section 235(1) of the 2008 Act) acquired by the undertaker, whether compulsorily or by agreement, for the purposes of the authorised development as if—

(i) the reference to statutory undertakers in section 127(8) of the 2008 Act included the undertaker; and

- (ii) the use of the land or holding of an interest in the land for the purposes of the authorised development amounted to the carrying on of a statutory undertaking for the purposes of section 127(1)(c) of the 2008 Act; and
- (b) section 138(4) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act applies as if—
  - (i) the rights acquired by the undertaker under this Order (whether compulsorily or by agreement) were a relevant right for the purposes of sections 138(1) and (2) of the 2008 Act;
  - (ii) the Works authorised to be constructed by this Order were relevant apparatus for the purposes of sections 138(1) and (3) of the 2008 Act; and
  - (iii) the reference to statutory undertakers in section 138(4A) of the 2008 Act included the undertaker,

but not in either case for any other purpose whatsoever.

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

**26.**—(1) Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act, as applied to this Order by section 125(2) (application of compulsory acquisition provisions) of the 2008 Act is modified as follows.

(2) In section 4A(1)(3) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the Southampton to London Pipeline Development Consent Order 2020”.

(3) In section 11A(4) (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (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 24 (time limit for exercise of authority to acquire land compulsorily) of the Southampton to London Pipeline 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 28(3) (acquisition of subsoil or airspace only) of the Southampton to London Pipeline Development Consent Order 2020, which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

(b) after paragraph 29, insert—

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(2) Section 125 was amended by section 190 of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22).

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

(4) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

## “PART 4 INTERPRETATION

**30.** In this Schedule, references to entering on and taking possession of land do not include doing so under article 19 (protective work to buildings), 30 (temporary use of land for carrying out the authorised development) or 31 (temporary use of land for maintaining the authorised development) of the Southampton to London Pipeline Development Consent Order 2020.”

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

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

(2) The 1981 Act, as so 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(5) (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

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

(6) In section 5B(1)(7) (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 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008 the five year period mentioned in article 24 (time limit for exercise of authority to acquire land compulsorily) of the Southampton to London Pipeline Development Consent Order 2020”.

(7) In section 6(8) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(9) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

(8) In section 7(10) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

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

“(2) But see article 28(3) (acquisition of subsoil or airspace only) of the Southampton to London Pipeline 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 (and as modified by article 26 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of land under this Order.

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(5) Section 5 was amended by Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(6) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22)

(7) Section 5B(1) was inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(8) Section 6 was amended by section 4 of, and 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 (c. 22).

(9) Section 134 was amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 and S.I. 2012/16.

(10) Section 7(1) was substituted by paragraphs 1 and 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(11) Schedule A1 was inserted by paragraph 6 of Part 1 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

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

**28.**—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of and the airspace over the land referred to in paragraph (1) of article 21 (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) Where the undertaker acquires any part of, or rights in, the subsoil of or the airspace over any land referred to in paragraph (1), the undertaker is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 265 (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)(**12**) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990(**13**).

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

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

**29.**—(1) The undertaker may enter upon, appropriate and use so much of the subsoil of, or airspace over, any street within the Order limits, other than Ministry of Justice Land, as may be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(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, will be 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 use of land for carrying out the authorised development**

**30.**—(1) The undertaker may, in connection with the carrying out of the authorised development—

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(12) Subsection (4A) of section 153 was inserted by section 200(1) and (2) of the Housing and Planning Act 2016 (c. 22).

(13) 1990 (c. 8).

- (a) enter on and take temporary possession of—
    - (i) the land specified in column (1) of Schedule 7 (land of which only temporary possession may be taken) in connection with the part of the authorised development specified in column (2) of that Schedule; and
    - (ii) any other Order land, except for Ministry of Justice land, in respect of which no notice of entry has been served under section 11 (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 (execution of declaration) of the 1981 Act;
  - (b) remove any structure, apparatus, buildings and vegetation from the land referred to in sub-paragraph (a);
  - (c) construct temporary works (including the provision of means of access), security fencing, storage areas, structures and buildings, on the land referred to in sub-paragraph (a); and
  - (d) construct any works on the land referred to in sub-paragraph (a) as are mentioned in Schedule 1 (authorised development).
- (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 and explain the purpose for which entry is taken in respect of land specified under paragraph 1(a)(ii).
- (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 (2) of Schedule 7, 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 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) restore the land to a condition better than the land was in before temporary possession;
  - (d) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
  - (e) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development; or
  - (f) remove or reposition any apparatus belonging to statutory undertakers or necessary mitigation works.
- (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 (determination of questions of disputed compensation) of the 1961 Act.

(7) Any dispute as to the satisfactory removal of temporary works and restoration of land under paragraph (4) does not prevent the undertaker giving up possession of the land.

(8) Subject to article 47 (no double recovery), 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 carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).

(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)(**14**) 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 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 paragraph (1).

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

**31.**—(1) Subject to paragraph (2), and without prejudice to any other rights enjoyed by the undertaker from time to time, at any time during the maintenance period relating to any part of the authorised development, the undertaker may—

- (a) enter upon and take temporary possession of any land within the Order limits, except for Ministry of Justice land, 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 buildings 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 any house or 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 explain the purpose for which entry is taken.

(4) The undertaker is not required to serve notice under paragraph (3) where the undertaker has identified a potential risk to the safety of—

- (a) the authorised development or any of its parts;
- (b) the public; and/or
- (c) the surrounding environment,

and in such circumstances, the undertaker may enter the land under paragraph (1) subject to giving such notice (if any) as is reasonably practicable in the circumstances.

(5) 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.

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**(14)** 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).



(6) 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.

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

(9) 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 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 the acquiring authority) of the 1965 Act 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 (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 that part of the authorised development is brought into operational use, except where the authorised development is replacement or landscape planting where "the maintenance period" means the period of 5 years beginning with the date on which that part of the replacement or landscape planting is completed.

### **Crown rights**

**32.—**(1) Nothing in this Order affects prejudicially any estate, right, power, privilege, authority or exemption of the Crown and, in particular, nothing in this Order authorises the undertaker or any licensee to take, use, enter upon or in any manner interfere with any land or rights of any description (including any portion of the shore or bed of the sea or any river, channel, creek, bay or estuary)—

- (a) belonging to Her Majesty in right of the Crown and forming part of the Crown Estate without the consent in writing of the Crown Estate Commissioners;
- (b) belonging to Her Majesty in right of the Crown and not forming part of the Crown Estate without the consent in writing of the government department having the management of that land; or
- (c) belonging to a government department or held in trust for Her Majesty for the purposes of a government department without the consent in writing of that government department.

(2) Paragraph (1) does not apply to the exercise of any right under this Order for the compulsory acquisition of an interest in any Crown land (as defined in section 227 of the 2008 Act) which is for the time being held otherwise than by or on behalf of the Crown.

(3) The authorised development must not commence until agreement has been secured with the Secretary of State for Justice for use of the Ministry of Justice land for the authorised development.

(4) A consent under paragraph (1) may be given unconditionally or subject to terms and conditions and is deemed to have been given in writing where it is sent electronically.

### **Special category land**

**33.—**(1) So much of the special category land as may be required for the purposes of the exercising by the undertaker of the Order rights will be discharged from all rights, trusts and incidents

to which it was previously subject, so far as their continuance would be inconsistent with the exercise of the Order rights.

(2) So far as the temporary use of land under either article 30 (temporary use of land for carrying out the authorised development) and article 31 (temporary use of land for maintaining the authorised development) is concerned, then the discharge in paragraph (1) is only for such time as any land required only temporarily is being used under either of those articles.

(3) In this article—

“Order rights” means rights and powers exercisable over the special category land by the undertaker under article 23 (compulsory acquisition of rights) and article 30 (temporary use of land for carrying out the authorised development);

“the special category land” means the land identified as forming part of a common, open space, or fuel or field allotment in the book of reference and on the plan entitled “special category land plan”; and

“the special category land plan” means the plan of that description set out in Schedule 11 (documents to be certified) and certified as the special category land plan by the Secretary of State for the purposes of this Order.

### **Statutory undertakers**

**34.** Subject to the provisions of Schedule 9 (protective provisions) the undertaker may—

- (a) acquire compulsorily the land belonging to statutory undertakers within the Order limits and described in the book of reference;
- (b) acquire existing rights, create and acquire new rights and impose restrictive covenants over the land belonging to statutory undertakers within the Order limits and described in the book of reference;
- (c) extinguish or suspend the rights of, or remove or reposition apparatus belonging to, statutory undertakers over or within the Order limits;
- (d) construct the authorised development in such a way as to cross underneath or over apparatus belonging to statutory undertakers and other like bodies within the Order limits; and
- (e) construct over existing apparatus belonging to statutory undertakers any necessary track or roadway (whether temporary or permanent) together with the right to maintain or remove the same, and install such service media under or over the existing apparatus needed in connection with the authorised development.

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

**35.—(1)** Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 34 (statutory undertakers) 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 34, 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 Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this article—

“public communications provider” has the same meaning as in section 151(1) (interpretation of Chapter 1) of the Communications Act 2003<sup>(15)</sup>; and

“public utility undertaker” means a gas, water, electricity or sewerage undertaker.

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(15) 2003 c. 21. There are amendments to this Act which are not relevant to this Order.