STATUTORY INSTRUMENTS

2022 No. 1396

The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022

PART 5

POWERS OF ACQUISITION

Compulsory acquisition of land

18.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised development or to facilitate it, or is incidental to it, and may use any land so acquired for the purposes authorised by this Order or for any other purposes in connection with or ancillary to the authorised development.

(2) As from the date on which a compulsory acquisition notice is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, that land or that part of it which is vested (as the case may be) is discharged from all rights, trusts and incidents to which it was previously subject.

(3) This article is subject to article 21 (compulsory acquisition of rights etc.), article 24 (acquisition of subsoil or airspace only), article 27 (temporary use of land for carrying out the authorised development), article 28 (temporary use of land for maintaining the authorised development) and article 32 (Crown rights).

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

Commencement Information

I1 Art. 18 in force at 29.12.2022, see **art. 1**

Statutory authority to override easements and other rights

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

authorised by virtue of this Order 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 and any restrictions as to the use of land arising by virtue of a contract.

(4) Section 10(2) 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 must be applied to the construction of paragraph (2) (with any necessary modifications).

Commencement Information

I2 Art. 19 in force at 29.12.2022, see **art. 1**

Time limit for exercise of authority to acquire land compulsorily

20.—(1) After the end of the period of five 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 (execution of declaration) as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981 and Part 1 of the Land Compensation Act 1961).

(2) The authority conferred by article 27 (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 is to prevent 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.

Commencement Information

I3 Art. 20 in force at 29.12.2022, see **art. 1**

Compulsory acquisition of rights etc.

21.—(1) Subject to paragraphs (2) to (4), the undertaker may acquire compulsorily such rights over the Order land as may be required for any purpose for which that land may be acquired under article 18 (compulsory acquisition of land) by creating new rights as well as by acquiring rights already in existence.

(2) In the case of the Order land specified in column (1) of the table in Schedule 6 (land in which only new rights etc. may be acquired) the undertaker's powers under paragraph (1) are limited to acquire compulsorily the existing rights over land and create and acquire compulsorily the new rights as are specified in column (2) of that Schedule.

(3) In the case of Order land required for Work No. **[**[F1]4A or 4B**]**, the undertaker's powers under paragraph (1) are **[**[F2]respectively**]** limited to either plots falling within Work No. 4A or plots falling within Work No. 4B and following approval by the relevant planning authority of the details for Work No. 4 pursuant to Requirement 5(4) the undertaker shall:

(a) if Work No. 4A is to be developed, serve written notice on those plots (being plots falling within Work No. 4B) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots; or

(b) if Works No. 4B is to be developed, serve written notice on those plots (being plots falling within Work No. 4A) confirming that the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots.

(4) Following approval by the relevant planning authority of the details for Work No. 3B pursuant to Requirement 5(3) the undertaker shall serve written notice on those with interests in plots falling within Work No. 3B which are not required for the approved Work No. 3B confirming the undertaker no longer intends to implement any powers of compulsory acquisition in relation to such plots and the undertaker's powers in paragraph (1) shall not apply to such plots.

(5) Subject to section 8 of the 1965 Act (other provisions as to divided land), Schedule 2A to the 1965 Act (counter-notice requiring purchase of land not in notice to treat) as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights), and section 12 of the 1981 Act (divided land), where the undertaker creates or acquires a right over land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(6) 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 in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

(7) In any case where the acquisition of new rights under paragraph (1) or (2) 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 to the statutory undertaker in question.

(8) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (7) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

(9) This article is subject to article 32 (Crown Rights).

Textual Amendments

F1 Words in art. 21(3) substituted (20.4.2023) by The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) (Correction) Order 2023 (S.I. 2023/442), art. 1, **Sch.**

F2 Words in art. 21(3) added (20.4.2023) by The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) (Correction) Order 2023 (S.I. 2023/442), art. 1, **Sch.**

Commencement Information

I4 Art. 21 in force at 29.12.2022, see **art. 1**

Private rights

22.—(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, or of the right, or of the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement;

(b) on the date of entry on the land by the undertaker under section 11(1) of the 1965 Act (power of entry); or

(c) on commencement of any activity authorised by the Order which interferes with or breaches those rights,

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 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 earlier.

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

(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 as long as the undertaker remains in lawful possession of the land and so far as their continuance would be inconsistent with the exercise of the temporary possession of that land.

(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 or apparatus to which section 138 of the 2008 Act (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) or article 29 (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, the acquisition of rights over the land or the creation of rights over 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; or

(b) any agreement made at any time between the undertaker and the person in or to whom the right or restriction 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.

Commencement Information

I5 Art. 22 in force at 29.12.2022, see **art. 1**

Application of the 1981 Act and Part 1 of the 1961 Act

23.—(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(2) (earliest date for execution of declaration), omit the words from ", and this subsection" to the end.

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

(6) In section 5B (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 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022.".

(7) In section 6 (notices after execution of declaration) for subsection (1)(b) substitute—

"(b) on every other person who has given information to the acquiring authority with respect to any of that land further to the invitation published and served under section 134 (notice of authorisation of compulsory acquisition) of the Planning Act 2008,".

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

"(2) But see article 24(3) (acquisition of subsoil or airspace only) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022 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 25 (modification of Part 1 of the Compulsory Purchase Act 1965).

(11) Part 1 of the 1961 Act shall apply where pursuant to this Order there arises a dispute as to compensation which is payable pursuant to this Order notwithstanding that such dispute may not relate to compensation for the acquisition of land authorised by this Order.

Commencement Information

I6 Art. 23 in force at 29.12.2022, see **art. 1**

Acquisition of subsoil or airspace only

24.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil or airspace of the land referred to in paragraph (1) of article 18 (compulsory acquisition of land) and paragraph (1) of article 21 (compulsory acquisition of rights etc.) as may be required for any purpose for which that land or rights over land may be created or acquired under those provisions instead of acquiring the whole of the land.

(2) Where the undertaker acquires any part of, or rights in, the subsoil of or airspace over land under paragraph (1), the undertaker is not to be required to acquire an interest in any other part of the land.

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

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and

(c) section 153(4A) (reference of objection to Upper Tribunal: general) of the 1990 Act.

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

Commencement Information

I7 Art. 24 in force at 29.12.2022, see **art. 1**

Modification of Part 1 of the 1965 Act

25.—(1) Part 1 of the 1965 Act (compulsory purchase under Acquisition of Land Act 1946), 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)(**1**) (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 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022".

(3) In section 11A(**2**) (powers of entry: further notices of entry)—

(a) in subsection (1)(a) after "land" insert "under that provision"; and

(b) in subsection (2) after "land" insert "under that provision".

(4) In section 22(2) (interests omitted from purchase), for "section 4 of this Act" substitute "article 20 (time limit for exercise of authority to acquire land compulsorily) of the Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022".

Commencement Information

I8 Art. 25 in force at 29.12.2022, see **art. 1**

Rights under or over streets

26.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space 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.

(**1**) Inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
(**2**) Inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(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 by the exercise of that power, is to be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

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

Commencement Information

I9 Art. 26 in force at 29.12.2022, see **art. 1**

Temporary use of land for carrying out the authorised development

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

(a) enter on and take temporary possession of—

(i) so much of the land specified in column (1) of the table in Schedule 8 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that table; and

(ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (powers of entry) and no declaration has been made under section 4 of the 1981 Act (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 (2) of the table in Schedule 8 (land of which temporary possession may be taken), or any mitigation works.

(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 twenty-eight 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 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 completion of the works for which temporary possession of the land was taken; 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 completion of the works for which temporary possession of the land was taken 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 1981 Act in relation to the land or has otherwise acquired the land subject to temporary possession.

(5) Unless the undertaker has served notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act in relation to the land 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 required to replace a building or debris removed under this article.

(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 any power conferred by this article.

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

(8) Nothing in this article affects any liability to pay compensation under section 152 (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 (6).

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

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

(a) creating and acquiring new rights over any part of the Order land identified in Schedule 6 (new rights) under article 21 (compulsory acquisition of rights etc.); or

(b) acquiring any right in the subsoil of or airspace over any part of the Order land under article 24 (acquisition of subsoil or airspace only) or article 26 (rights under or over streets).

(11) 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.

(12) 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).

(13) 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).

Commencement Information

I10 Art. 27 in force at 29.12.2022, see **art. 1**

Temporary use of land for maintaining the authorised development

28.—(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 land if such possession is reasonably required for the purpose of maintaining the authorised development;

(b) enter on any land within the Order land 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 twenty-eight 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 section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where the undertaker takes possession of land under this article, the undertaker is not to be required to acquire 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 five years beginning with the date which that part of the authorised development is first operational except in respect of any part of the authorised development which is comprised of landscaping where "the maintenance period" means such period as set out in the landscape and biodiversity strategy which is approved by the relevant planning authority pursuant to Requirement 6 of Schedule 2 beginning with the date on which that part of the landscaping is completed.

Commencement Information

I11 Art. 28 in force at 29.12.2022, see **art. 1**

Statutory undertakers

29. Subject to Schedule 10 (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 or within the Order land; and

(c) create and acquire compulsorily the new rights over land belonging to statutory undertakers within the Order land.

Commencement Information

I12 Art. 29 in force at 29.12.2022, see **art. 1**

Apparatus and rights of statutory undertakers in streets

30. Where a street is altered or diverted or its use is temporarily prohibited or restricted under article 9 (street works), article 10 (power to alter layout, etc., of streets), article 11 (construction and maintenance of new or altered means of access) or article 12 (access to works) 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 10 (protective provisions), as if this Order had not been made.

Commencement Information

I13 Art. 30 in force at 29.12.2022, see **art. 1**

Recovery of costs of new connections

31.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 29 (statutory undertakers) any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(2) Paragraph (1) does not apply in the case of the removal of a public sewer but where such a sewer is removed under article 29 (statutory undertakers), 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 30 (apparatus and rights of statutory undertakers in streets) or Part 3 of the 1991 Act applies.

(4) In this article—

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003(**3**); and

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

(**3**) 2003 c. 21.

Commencement Information

I14 Art. 31 in force at 29.12.2022, see **art. 1**

Changes to legislation:
There are currently no known outstanding effects for the The Keadby 3 (Carbon Capture Equipped Gas Fired Generating Station) Order 2022, PART 5.