
STATUTORY INSTRUMENTS

2024 No. 360

**The A66 Northern Trans-Pennine
Development Consent Order 2024**

PART 3

POWERS OF ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Compulsory acquisition of land

19.—(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 22 (compulsory acquisition of rights and restrictive covenants), article 27 (acquisition of subsoil, etc., only) and article 29 (temporary use of land for constructing the authorised development).

Compulsory acquisition of land – incorporation of the minerals code

20. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981 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

21.—(1) After the end of the period of five 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 25 (modification of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act),

in relation to any part of the Order land.

(2) The authority conferred by article 29 (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.

Compulsory acquisition of rights and restrictive covenants

22.—(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 as may

be required for any purpose for which that land may be acquired under article 19 (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 4 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition under paragraph (1) are limited to the acquisition 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 for the purposes specified in column (3) of Schedule 4 in relation to that land.

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

(4) Schedule 5 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

23.—(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; or
- (b) on the date of entry onto the land by the undertaker under section 11(1)(3) (powers of entry) of the 1965 Act,

whichever is the earlier.

(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 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; or
- (b) on the date of entry onto the 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 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.

(4) 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(4) (compensation in case where no right to claim in nuisance) of the

(1) Section 8 was amended by paragraphs 1 and 2 of Schedule 17 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.
(2) Schedule 2A was inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016.
(3) 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 (No. 1), section 186(1) and (2) of the Housing and Planning Act 2016 and S.I. 2009/1307.
(4) Section 152 was amended by S.I. 2009/1307.

2008 Act to be determined, in case of dispute, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(5) This article does not apply in relation to any right to which section 138(5) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 31 (statutory undertakers) applies.

(6) 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 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 made at any time between the undertaker and the person in or to whom the right in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(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.

(8) 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, 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

24.—(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, 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 the user of land arising by virtue of a 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 (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

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

(ii) the injury arises from the execution 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 (including the temporary use of land).

Modification of Part 1 of the 1965 Act

25.—(1) Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied to this Order by section 125(6) (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(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 4” substitute “section 118(8) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the 5 year period mentioned in article 21 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the A66 Northern Trans-Pennine Development Consent Order 2024”.

(3) In section 11A(9) (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 21 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the A66 Northern Trans-Pennine Development Consent Order 2024”.

(5) In Schedule 2A(10) (counter-notice requiring purchase of land not in notice to treat)—

- (a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 27(4) (acquisition of subsoil, etc., only) of the A66 Northern Trans-Pennine Development Consent Order 2024, which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

- (b) after paragraph 29, insert—

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

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

(8) Section 118 was amended by paragraphs 1 and 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).

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

(10) Schedule 2A was inserted by section 199(1) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016.

“PART 4 INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 14 (protective works to buildings), 15 (authority to survey and investigate land), 29 (temporary use of land for constructing the authorised development) or 30 (temporary use of land for maintaining the authorised development) of the A66 Northern Trans-Pennine Development Consent Order 2024.”.

Application of the 1981 Act

- 26.**—(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(11) (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(12) (time limit for general vesting declaration).
- (6) In section 5B(13) (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(14) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the 5 year period mentioned in article 21 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the A66 Northern Trans-Pennine Development Consent Order 2024”.
- (7) In section 6(15) (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(16) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7(17) (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(18) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—
- “(2) But see article 27(4) (acquisition of subsoil, etc., only) of the A66 Northern Trans-Pennine Development Consent Order 2024, 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

(11) Section 5 was amended by section 183 of, and paragraphs 4 and 6 of Schedule 15 to, the Housing and Planning Act 2016.

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

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

(14) Section 118 was amended by paragraphs 1 and 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).

(15) 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.

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

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

(18) Schedule A1 was inserted by paragraphs 1 and 6 of Schedule 18 to the Housing and Planning Act 2016.

as modified by article 25 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil, etc., only

27.—(1) The undertaker may acquire compulsorily so much of, or such rights over, the subsoil of and airspace over the land referred to in paragraph (1) of article 19 (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 over, the subsoil or surface of or airspace over 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;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A)(19) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(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 over or under streets

28.—(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 for 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 land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, as if it were a 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.

(19) Section 153(4A) was inserted by section 200(1) and (2) of the Housing and Planning Act 2016.

Temporary possession of land

Temporary use of land for constructing the authorised development

29.—(1) The undertaker may, in connection with the construction of the authorised development but subject to article 21 (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 6 (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(20) (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(21) (execution of declaration) of the 1981 Act;
- (b) remove any buildings and vegetation from that land referred to in sub-paragraph (a);
- (c) construct temporary works (including the provision of means of access) 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 proposed to be 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 (4) of Schedule 6; 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 work, 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 (powers of entry) of the 1965 Act or made a declaration under section 4 (execution of declaration) 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 or return the land in such condition as is agreed with the owner 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);

(20) Section 11 was amended by section 34(1) of, and paragraph 14(3) of Schedule 4 of, 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) Measure 2006 (No. 1), sections 186, 187 and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 and S.I. 2009/1307.

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

- (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) 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 as if it were a dispute under Part I (determination of questions of disputed compensation) of the 1961 Act.
- (7) Subject to article 39 (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 execution of any works, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i).
- (9) 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(22) (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.

Temporary use of land for maintaining the authorised development

- 30.**—(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.

(22) 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).

(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 powers 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, must be determined as if it were a dispute under Part 1 (determination of questions of disputed compensation) 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 execution 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, it is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to the 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.

(11) 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

31.—(1) Subject to the provisions of article 22(2) (compulsory acquisition of rights and restrictive covenants), Schedule 9 (protective provisions) and paragraph (2), the undertaker may—

- (a) exercise the powers conferred by article 19 (compulsory acquisition of land) and article 22 (compulsory acquisition of rights and restrictive covenants) in relation to so much of the Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, 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 32 (apparatus and rights of statutory undertakers in stopped up streets).

Apparatus and rights of statutory undertakers in stopped up streets

32.—(1) Where a street is stopped up under article 10 (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 10 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 statutory 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 statutory 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 execution of the relocation works.

(4) If in the course of the execution 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 execution 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 of 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 statutory 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 executed, 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 chapter 1) of the Communications Act 2003.

Recovery of costs of new connection

33.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 31 (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 sewer is removed under article 31, 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 32 (apparatus and rights of statutory undertakers in stopped up streets) or 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 the Communications Act 2003; and

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

Special category land

34.—(1) On the exercise by the undertaker of the relevant Order powers, the special category land is not to vest in the undertaker until the undertaker has acquired the replacement land and the Secretary of State (in consultation with the relevant planning authority) has approved a scheme for the provision of the replacement land and the relevant planning authority has certified that the scheme has been implemented to its satisfaction.

(2) On the requirements of paragraph (1) being satisfied—

- (a) the special category land is to vest in the undertaker and be discharged from all rights, trusts and incidents to which it was previously subject; and
- (b) the replacement land is to vest, subject to the same rights, trusts and incidents as attached to the special category land, as follows—
 - (i) in relation to the scheme 0102 special category, in any person in whom the special category land was vested immediately before it was vested in the undertaker; and
 - (ii) in relation to the scheme 06 special category land and the scheme 07 special category land, in the relevant planning authority.

(3) In this article—

“the relevant Order powers” means the powers exercisable over the special category land by the undertaker under article 19 (compulsory acquisition of land) or article 22 (compulsory acquisition of rights and restrictive covenants);

“the special category land” means—

- (i) the land within the Order limits for scheme 0102 identified as comprising open space and being numbered 0102-01-32, 0102-01-47, 0102-02-01, 0102-02-08 and 0102-02-22 in the book of reference for scheme 0102 and shown on the special category land plans for scheme 0102 (“the scheme 0102 special category land”);
- (ii) the land within the Order limits for scheme 06 identified as comprising common land and being numbered 06-01-04, 06-01-05, 06-01-10, 06-01-44, 06-01-45 and 06-01-46 in the book of reference for scheme 06 and shown on the special category land plans for scheme 06 (“the scheme 06 special category land”); and
- (iii) the land within the Order limits for scheme 07 identified as comprising common land and being numbered 07-01-48, 07-01-51, 07-01-53, 07-01-61, 07-01-63, 07-01-64, 07-01-75, 07-01-76, 07-01-86, 07-01-87, 07-01-89 and 07-01-94 in the book of reference for scheme 07 and on the special category land plans for scheme 07 (“the scheme 07 special category land”); and

“the replacement land” means—

- (i) for the scheme 0102 special category land, the land identified as replacement land and numbered 0102-02-20 in the book of reference for scheme 0102 and shown on the special category land plans for scheme 0102;
- (ii) for the scheme 06 special category land (common land), the land identified as replacement land and numbered 06-01-39 in the book of reference for scheme 06 and shown on the special category land plans for scheme 06; and
- (iii) for the scheme 07 special category land, the land identified as replacement land and numbered 07-01-25 in the book of reference for scheme 07 and shown on the special category land plans for scheme 07.

Crown rights

35.—(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 to take, use, enter upon or in any manner interfere with any land or rights of any description (including any river, channel, creek, bay or estuary)—

- (a) belonging to His 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 His Majesty in right of the Crown and 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 His 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 any interest in any Crown land (as defined in the 2008 Act) for the time being held otherwise than by or on behalf of the Crown.

(3) 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.

Relocation of Brough Hill Fair

36.—(1) Subject to paragraph (8), the undertaker must not take exclusive possession of any part of the existing Brough Hill Fair site for the purposes of constructing the authorised development until the Secretary of State has—

- (a) approved a scheme prepared by the undertaker for the provision of the replacement Brough Hill Fair site; and
- (b) certified that—
 - (i) the approved scheme has been satisfactorily implemented by or on behalf of the undertaker; and
 - (ii) the replacement Brough Hill Fair site is suitable and available for use by the persons who enjoy the Brough Hill Fair rights.

(2) The scheme for the provision of the replacement Brough Hill Fair site mentioned in paragraph (1) must—

- (a) provide for the replacement Brough Hill Fair site to be laid out such that it is a suitable replacement for the existing Brough Hill Fair site, in terms of—
 - (i) including facilities that are at least as equivalent to those of the existing Brough Hill Fair site at the time this Order came into force;
 - (ii) making appropriate provision for safe access to and from the replacement Brough Hill Fair site for vehicles, horses and persons;
 - (iii) making appropriate provision for the treatment of the boundaries of the replacement Brough Hill Fair site, to secure the safe use and enjoyment of the site and having regard to the use and amenity of adjacent land; and
 - (iv) setting out the arrangements for maintenance and management of the facilities, access and boundaries mentioned in paragraphs (i) to (iii) above, having regard in particular to safety and security considerations; and
- (b) be prepared by the undertaker following consultation with—
 - (i) such persons as the undertaker reasonably considers represents the interests of the persons who enjoy the Brough Hill Fair rights;
 - (ii) the owners and occupiers of land adjacent to the replacement Brough Hill Fair site;
 - (iii) the relevant planning authority; and
 - (iv) the local highway authority.

(3) The Secretary of State requires a consultation report to be submitted together with the prepared scheme prior to its approval pursuant to paragraph (1)(a) and a consultation report and arrangements detailing the implementation of the approved scheme prior to its certification pursuant to paragraph (1)(b).

(4) The Secretary of State may undertake his own consultation if he regards it to be appropriate with the parties referred to in paragraph (2)(b) and such other parties as he considers appropriate.

(5) The Secretary of State requires the undertaker to provide independent verification that the arrangements for the implementation for the approved scheme have been effectively undertaken in accordance with paragraph (1)(b) before the scheme is certified by the Secretary of State; and the cost of the independent verification is to be borne by the undertaker.

(6) Immediately on taking exclusive possession of the existing Brough Hill Fair site for the purposes of constructing the authorised development—

- (a) the Brough Hill Fair rights vest in the replacement Brough Hill Fair site; and
- (b) the existing Brough Hill Fair site is released from the Brough Hill Fair rights.

(7) As soon as is reasonably practicable after taking exclusive possession of the existing Brough Hill Fair site for the purposes of constructing the authorised development, the undertaker must—

- (a) publish in a locally circulating newspaper a notice confirming the date on which the Brough Hill Fair rights vested in the replacement Brough Hill Fair site and the existing Brough Hill Fair site was released from the Brough Hill Fair rights; and
- (b) notify such persons as the undertaker reasonably considers represent the interests of the persons who enjoy the Brough Hill Fair rights.

(8) Nothing in paragraph (1) prohibits the undertaker from taking exclusive possession of any part of the existing Brough Hill Fair site for the purposes of implementing a scheme approved under that paragraph.

(9) The scheme approved by the Secretary of State under paragraph (1)(a) may be modified by the undertaker before it has been implemented in full, and if it is then paragraphs (1) to (2) apply to the preparation, approval and implementation of the modified scheme.

(10) The transfer of the Brough Hill Fair rights to the replacement Brough Hill Fair site by virtue of paragraph (6) is not to be regarded, in any claim or legal proceedings relating to the nature and extent of the Brough Hill Fair rights, as resulting in any interruption to the enjoyment of those rights.

(11) In this article—

“the Brough Hill Fair rights” means any and all customary rights, prescriptive rights, rights derived from royal charter and public rights, that relate to the event known as the Brough Hill Fair that do or may subsist immediately before the Brough Hill Fair rights are transferred to the replacement Brough Hill Fair site in accordance with the provisions of this article;

“the consultation report” means the report containing the responses of the parties referred to in paragraph (2)(b) and setting out the position as agreed between the undertaker and those parties, and in the event of disagreement the provisions of article 51 (arbitration) are to apply.

“the existing Brough Hill Fair site” means the land described in the book of reference for scheme 06 and shown on the land plans for scheme 06 that is numbered 06-04-43 and 06-05-06; and

“the replacement Brough Hill Fair site” means the land in the book of reference for scheme 06 and shown on the land plans for scheme 06 that is—

- (a) numbered 06-04-32 and 06-04-33; and
- (b) numbered 06-04-43 but only so much of it (approximately 4,000 square metres) as is included in the scheme certified under paragraph (1)(b).

Compensation

Disregard of certain interests and improvements

37.—(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 carried out 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 carrying out 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

constructed 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

38.—(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 22 (compulsory acquisition of rights and restrictive covenants), 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

39. 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.