
STATUTORY INSTRUMENTS

2024 No. 436

The HyNet Carbon Dioxide Pipeline Order 2024

PART 5

Powers of Acquisition

Compulsory acquisition of land

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

(2) This article is subject to article 25 (time limit for exercise of authority to acquire land compulsorily), article 26(2) (compulsory acquisition of rights and restrictive covenants) and article 34(8) (temporary use of land for carrying out the authorised development).

Time limit for exercise of authority to acquire land compulsorily

25.—(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 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act⁽¹⁾ as applied by article 30 (application of the 1981 Act).

(2) The authority conferred by article 34 (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.

Compulsory acquisition of rights and restrictive covenants

26.—(1) Subject to the provisions of this article, the undertaker may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that land may be acquired under article 24 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) Subject to the provisions of this article, articles 29 (private rights) and 36 (statutory undertakers) in the case of the Order land specified in column (1) of Schedule 8 (land in which only new rights etc., may be acquired) the undertaker's powers of compulsory acquisition are limited to the acquisition of new rights in the land or the imposition of restrictive covenants under paragraph (1) as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 (other provisions as to divided land) of the 1965 Act, and Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 4(8) of Schedule 9 (modification of compensation and compulsory purchase enactments

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

for creation of new rights) to the 1965 Act), 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 9 (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 or the imposition of a restrictive covenant.

(5) In any case where the acquisition of new rights or the imposition of restrictive covenants 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 to the statutory undertaker in question.

(6) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by the undertaker.

Statutory authority to override easements and other rights

27.—(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), despite it involving—

- (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, caused by the carrying out or use of the authorised development and the operation of section 158 of the 2008 Act.

(3) The interests and rights to which this article applies are any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support.

(4) Subsection (2) of section 10 of the 1965 Act (further provision as to compensation for injurious affection) 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.

Compulsory acquisition of land: minerals

28. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(2) are incorporated in this Order, subject to the following modifications—

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

Private rights

29.—(1) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to compulsory acquisition under article 24 (compulsory acquisition of land) cease to have effect in so far as their continuance would be inconsistent with the exercise of the powers under article 24—

- (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) (power of entry) of the 1965 Act⁽³⁾

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights or restrictive covenants over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under article 26 (compulsory acquisition of rights and restrictive covenants) cease to have effect in so far as their continuance would be inconsistent with the exercise of the right or compliance with the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant by the undertaker (whether the right is acquired compulsorily, by agreement or through the grant of lease of the land 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.

(3) 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, in so far as their continuance would be inconsistent with the purpose for which temporary possession is taken, 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 restrictive covenant under this article is entitled to compensation in accordance with the terms of section 152 (compensation in case where no right to claim in nuisance) of the 2008 Act to be determined 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 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 36 (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 rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) the undertaker's appropriation of the land;
 - (iii) the undertaker's entry onto the land; or
 - (iv) the undertaker taking temporary possession of the land,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 in question is vested or belongs.

(3) Section 11(1) was amended by sections 186 to 188 of the Housing and Planning Act 2016 (c.22), Schedule 4 to the Acquisition of Land Act 1981 (c. 67).

- (7) If an agreement referred to in sub-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,
 - the agreement is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.
- (8) Reference in this article to private rights over land includes reference to any trusts or incidents to which the land is subject.

Application of the 1981 Act

- 30.**—(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied, 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) Omit section 5(4) (earliest date for execution of declaration).
- (5) Omit section 5A (time limit for general vesting declaration).
- (6) In section 5B(1) (extension of time limit during challenge)—
- (a) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order)” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent)”; and
 - (b) for “the three year period mentioned in section 5A” substitute “the five year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the HyNet Carbon Dioxide Pipeline Order 2024”.
- (7) In section 6 (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 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—
- “(1) But see article 31(4) (acquisition of subsoil or airspace only) of the HyNet Carbon Dioxide Pipeline 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 constructed 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 32 (modification of Part 1 of the 1965 Act) to the compulsory acquisition of the land under this Order.

Acquisition of subsoil or airspace only

- 31.**—(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 24 (compulsory acquisition of land) and paragraph (1) of article 26 (compulsory acquisition of rights and restrictive covenants) as may

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

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

(3) Paragraph (2) does not prevent Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 32 or paragraph 4(8) of Schedule 9 as the case may be) from applying where the undertaker acquires any part of, or rights in a cellar, vault, arch or other construction forming part of a house, building or manufactory.

(4) 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 to the 1965 Act (as modified by article 32 (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) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

Modification of Part 1 of the 1965 Act

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

(2) In section 4A(1) (extension of time limit during challenge) for “section 23 (application to High Court in respect of compulsory purchase order) of the Acquisition of Land Act 1981, the three year period mentioned in section 4” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the 2008 Act, the 5 year period mentioned in article 25 (time limit for exercise of authority to acquire land compulsorily) of the HyNet Carbon Dioxide Pipeline Order 2024”.

(3) In section 11A (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) (interests omitted from purchase), for “section 4 of this Act” substitute “article 25 (time limit for exercise of authority to acquire land compulsorily) of the HyNet Carbon Dioxide Pipeline Order 2024”.

(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 31(3) (acquisition of subsoil or airspace only) of the HyNet Carbon Dioxide Pipeline Order 2024 which excludes the acquisition of subsoil or airspace only from this Schedule”; and
- (b) at the end insert—

“Part 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 23 (protective work to buildings), article 34 (temporary use

of land for carrying out the authorised development) or article 35 (temporary use of land for maintaining the authorised development) of the HyNet Carbon Dioxide Pipeline Order 2024”.

Rights under or over streets

33.—(1) The undertaker may enter on 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.

(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 appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is entitled to compensation to be determined 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 of 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

34.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 25 (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take temporary possession of—
 - (i) the land specified in columns (1) and (2) of Part 1 of Schedule 7 (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;
 - (ii) the land specified in columns (1) and (2) of Part 2 Schedule 7 (land of which only temporary possession for access may be taken) for the purposes of taking access to and from the authorised development only; and
 - (iii) any other Order 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 buildings, agricultural plant and apparatus, drainage, fences, debris and vegetation from that land;
- (c) construct temporary works (including the provision of means of access), structures and buildings on that land;
- (d) use the land for the purposes of a working site with access to the working site in connection with the authorised development;

- (e) construct any permanent works specified in relation to that land in column (4) of Part 1 of Schedule 7 (land of which only temporary possession may be taken), or any other mitigation works in connection with the authorised development;
- (f) construct any works, or use the land, as specified in relation to that land in column 3 of Parts 1 and 2 of Schedule 7, or any mitigation works;
- (g) construct such works on that land referred to in sub-paragraph (a) as are mentioned in Part 1 of Schedule 1 (authorised development); and
- (h) carry out mitigation works required pursuant to the requirements in Schedule 2.

(2) Not less than 3 months 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)(iii).

(3) The undertaker must not, remain in possession of the land under this article for longer than is reasonably necessary and in any event, 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) and (ii), 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 Parts 1 and 2 of Schedule 7 (land of which only temporary possession may be taken); or
- (b) in the case of any land referred to in paragraph (1)(a)(iii), after the end of the period of one year beginning with the date of completion of the work 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) 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 or otherwise acquired the land or rights over land subject to temporary possession, 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, or structure removed under this article;
- (b) remove any drainage works installed by the undertaker under this article;
- (c) remove any new road surface or other improvements carried out under this article to any street specified in Schedule 3 (streets subject to streets works)
- (d) restore the land on which any permanent works (including ground strengthening works) have been constructed under paragraph (1); or
- (e) 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 powers conferred by 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 1 (determination of questions of disputed compensation) of the 1961 Act.

(7) 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).

(8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) and (ii) except that the undertaker is not to be precluded from acquiring new rights over any part of that land under article 26 (compulsory acquisition of rights and restrictive covenants).

(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(5) (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.

(11) Paragraph (1) does not authorise the undertaker to take temporary possession of any land which the undertaker is not authorised to acquire under article 24 (compulsory acquisition of land) or article 26 (compulsory acquisition of rights and restrictive covenants).

Temporary use of land for maintaining the authorised development

35.—(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; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the undertaker to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering on and taking temporary possession of land under this article the undertaker must serve notice of the intended entry on the owners and occupiers of the land.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

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

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, 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 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 required to acquire the land or any interest in it.

(5) Section 13 was amended by Tribunals Courts and Enforcement Act 2007 (c. 15).

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

(11) In this article “the maintenance period” means—

- (a) the period referred to in requirement 12(4) in relation to the maintenance of landscaping;
- (b) in relation to any other part of the authorised development, means the period of 5 years beginning on which that part of the authorised development is brought into operational use.

(12) 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; or
- (c) the surrounding environment,

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

Statutory undertakers

36.—(1) Subject to the provisions of article 42 (protective provisions) and Schedule 10 (protective provisions), the undertaker may acquire compulsorily, or acquire new rights or impose restrictive covenants over, the land belonging to statutory undertakers shown on the land plans within the Order land and described in the book of reference.

(2) Subject to the provisions of article 42 (protective provisions) and Schedule 10 (protective provisions), the undertaker may extinguish the rights of, remove, relocate the rights of or reposition the apparatus belonging to statutory undertakers over or within the Order land.

Recovery of costs of new connections

37.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 36 (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 36 (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 Part 3 (street works in England and Wales) of the 1991 Act applies.

(4) In this paragraph—

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“public communications provider” has the same meaning as in section 151(1) of the 2003 Act⁽⁶⁾; and

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

⁽⁶⁾ 2003 c. 21.