
STATUTORY INSTRUMENTS

2023 No. 834

**The A303 (Amesbury to Berwick Down)
Development Consent Order 2023**

PART 3

POWERS OF ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Supplementary

Statutory undertakers

31.—(1) Subject to the provisions of article 22(4) (compulsory acquisition of rights), Schedule 11 (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) 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 utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as described in sub-paragraph (a).

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

- (a) the execution of the relocation works required in consequence of the stopping up of the street; and

- (b) the doing of any other work or thing rendered necessary by the 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 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(1).

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

(1) 2003 c. 21.

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 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 planning authority) has certified that a scheme for the provision of the replacement land as open space and a timetable for the implementation of the scheme has been received from the undertaker.

(2) On the requirements of paragraph (1) being satisfied, 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.

(3) On the exercise of the relevant Order powers, the rights to be acquired over the special category (rights) land are to vest in the undertaker or, where the powers of article 22(1) (compulsory acquisition of rights) are with the undertaker’s consent under article 22(2) exercised by a statutory undertaker, vest in that statutory undertaker, and the special category (rights) land is to be discharged from all private rights to which it was previously subject in accordance with article 23(2) (private rights over land).

(4) On the date on which the replacement land is laid out and provided in accordance with the scheme requirements at paragraph (1), the replacement land is to vest in any person in whom the special category land was vested immediately before it was vested in the undertaker and is to be subject to the same rights, trusts and incidents as attached to the special category land.

(5) 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);

“the special category land” means the land identified as forming open space and numbered 10-16 and 11-06 in the book of reference and shown on the special category land plans;

“the special category (rights) land” means the land identified as forming open space and numbered 10-18, 10-19, 11-04 and 11-05 in the book of reference and on the special category land plans; and

“the replacement land” means the land identified as such and numbered 10-17 and 11-33 in the book of reference and on the land plans.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.
