

STATUTORY INSTRUMENTS

2022 No. 934

The A428 Black Cat to Caxton Gibbet Development Consent Order 2022

PART 5 **E+W**

POWERS OF ACQUISITION AND POSSESSION OF LAND

Compulsory acquisition of land **E+W**

24.—(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.

(2) This article is [^{F1}subject to paragraph (3) of article 27] (compulsory acquisition of rights and imposition of restrictive covenants) and article 53 (crown rights).

Textual Amendments

F1 Words in [art. 24\(2\)](#) substituted (17.1.2023) by [The A428 Black Cat to Caxton Gibbet \(Correction\) Order 2023 \(S.I. 2023/40\)](#), [art. 1](#), [Sch.](#)

Commencement Information

I1 Art. 24 in force at 8.9.2022, see [art. 1](#)

Compulsory acquisition of land – incorporation of the mineral code **E+W**

25. Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981(1) are incorporated into this Order subject to the following modifications—

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

Commencement Information

I2 Art. 25 in force at 8.9.2022, see [art. 1](#)

Time limit for exercise of authority to acquire land compulsorily **E+W**

26.—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act; and

(1) 1981 c. 67.

(b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 34 (application of the 1981 Act).

(2) The authority conferred by article 37 (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 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.

Commencement Information

I3 Art. 26 in force at 8.9.2022, see [art. 1](#)

Compulsory acquisition of rights and imposition of restrictive covenants **E+W**

27.—(1) Subject to the following paragraphs of this article, the undertaker may acquire such rights over the Order land, or impose restrictive covenants affecting the Order land, including rights and restrictive covenants for the benefit of a statutory undertaker or any other person, 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) The power to impose restrictive covenants under paragraph (1) is exercisable only in respect of plots specified in column (1) of Schedule 5.

(3) In the case of the Order land specified in column (1) of Schedule 5 (land in which only new rights and restrictive covenants 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 in the land or the imposition of restrictive covenants, as may be required for the purposes specified in relation to that land in column (2) of that Schedule and relating to that part of the authorised development specified in column (3) of that Schedule.

(4) The power under paragraph (1) to acquire the rights and to impose the restrictive covenants described in Schedule 5 for the benefit of statutory undertakers or for the benefit of any other person—

- (a) does not preclude the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 5 as may be required for the benefit of any other statutory undertaker or any other person; and
- (b) must not be exercised by the undertaker in a way that precludes the acquisition of such other rights and the imposition of such other restrictive covenants in respect of the same land in accordance with Schedule 5 as are required for the benefit of any other statutory undertaker or any other person.

(5) Subject to section 8(2) (other provisions as to divided land) of, and Schedule 2A(3) (counter-notice requiring purchase of land not in notice to treat), to the 1965 Act, as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation of new rights), where the undertaker acquires a right over land or the benefit of a restrictive covenant affecting land under paragraph (1) or (2), the undertaker is not required to acquire a greater interest in that land.

(6) Schedule 6 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right or the imposition of a restrictive covenant.

(2) 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.

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

Commencement Information

I4 Art. 27 in force at 8.9.2022, see [art. 1](#)

Public rights of way **E+W**

28.—(1) The public rights of way identified in columns (1) to (3) of Parts 1 and 2 of Schedule 4 (permanent stopping up of highways and private means of access and provision of new highways and private means of access) and shown on the streets, rights of way and access plans are to be extinguished on the date of the expiry of the notice given under paragraph (2).

(2) The undertaker must erect a site notice at each end of the rights of way to be extinguished specifying a date for its extinguishment, which date must be—

- (a) in the case of the public rights of way identified in Part 2 of Schedule 4, no sooner than the date on which the relevant alternative section of public rights of way identified in column (4) of Part 2 of Schedule 4 is open for use by the public: or
- (b) in any other case, no sooner than 28 days after the date on which the site notices are erected.

Commencement Information

I5 Art. 28 in force at 8.9.2022, see [art. 1](#)

Private rights over land **E+W**

29.—(1) Subject to the provisions of this article, all private rights over land subject to compulsory acquisition under this Order are extinguished from whichever is the earlier of—

- (a) the date of acquisition of the land by the undertaker, whether compulsorily or by agreement; or
- (b) the date of entry on the land by the undertaker under section 11(1)(4) (power of entry) of the 1965 Act.

(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) as 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 on the land by the undertaker under section 11(1) (power of entry) of the 1965 Act,

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over land owned by the undertaker that are within the Order limits are extinguished when any material operation comprised in the authorised development interferes with or breaches those rights.

(4) 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) Section 11 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) and section 186 of the Housing and Planning Act 2016 (c. 22).

(5) Any person who suffers loss by the extinguishment or suspension of any private right under this article is entitled to compensation in accordance with the terms of section 152(5) (compensation in case where no right to claim in nuisance) of the 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.

(6) This article does not apply in relation to any right to which section 138(6) (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 39 (statutory undertakers) applies.

(7) Paragraphs (1) to (4) have effect subject to—

(a) any notice given by the undertaker before—

(i) the completion of the acquisition of the land or the acquisition of the rights 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.

(8) If any such agreement referred to in paragraph (7)(b)—

(a) is made with a person in or to whom the right is vested or belongs; and

(b) is expressed to have effect also for the benefit of those deriving title from or under that person,

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any trust, incident, easement, 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.

Commencement Information

I6 Art. 29 in force at 8.9.2022, see [art. 1](#)

Power to override easements and other rights **E+W**

30.—(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 including restrictions as to the user of land arising by the virtue of a contract.

(5) Section 152 was amended by [S.I. 2009/1307](#).

(6) Section 138 was amended by section 23 of the Growth and Infrastructure Act [2013 \(c. 27\)](#) and [S.I. 2017/1285](#).

- (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(7) (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
 - (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 the exercise of the powers under the following provisions, in the case where the land in respect of which the power is to be exercised has not been vested in or acquired by the undertaker—
- (a) article 22 (authority to survey and investigate the land);
 - (b) article 42 (felling or lopping of trees and removal of hedgerows).

Commencement Information

I7 Art. 30 in force at 8.9.2022, see [art. 1](#)

Disregard of certain interests and improvements **E+W**

31.—(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 carried out or the improvement or alteration made as part of the authorised development, directly or indirectly concerned.

Commencement Information

I8 Art. 31 in force at 8.9.2022, see [art. 1](#)

(7) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and by [S.I. 2009/1307](#).

Set-off for enhancement in value of retained land **E+W**

32.—(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 27 (compulsory acquisition of rights and imposition of 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.

Commencement Information

I9 Art. 32 in force at 8.9.2022, see [art. 1](#)

Modification of Part 1 of the 1965 Act **E+W**

33.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125(8) (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(9) (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 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the A428 Black Cat to Caxton Gibbet Development Consent Order 2022”.

(3) In section 11A(10) (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “[^{F2}article 26 (time limit for exercise of authority to acquire land compulsorily)] of the A428 Black Cat to Caxton Gibbet Development Consent Order 2022”.

(5) In Schedule 2A(11) (counter-notice requiring purchase of land not in notice to treat)—

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

“(2) But see article 35(3) (acquisition of subsoil or airspace only) of the A428 Black Cat to Caxton Gibbet Development Consent Order 2022, which excludes the acquisition of subsoil or airspace only from this Schedule”; and

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

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

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

(11) Schedule 2A was inserted by section 216(3) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016.

(b) after paragraph 29, end insert—

“PART 4 **E+W**

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 22 (protective works to buildings), 40 (temporary use of land for carrying out the authorised development) or 41 (temporary use of land for maintaining the authorised development) of the A428 Black Cat to Caxton Gibbet Development Consent Order 2022.”.

Textual Amendments

F2 Words in art. 33(4) substituted (17.1.2023) by [The A428 Black Cat to Caxton Gibbet \(Correction\) Order 2023 \(S.I. 2023/40\)](#), art. 1, [Sch.](#)

Commencement Information

I10 Art. 33 in force at 8.9.2022, see [art. 1](#)

Application of the 1981 Act **E+W**

- 34.**—(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(**12**) (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (5) Omit section 5A(**13**) (time limit for general vesting declaration).
- (6) In section 5B(1)(**14**) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118 (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 26 (time limit for exercise of authority to acquire land compulsorily) of the A428 Black Cat to Caxton Gibbet Development Consent Order 2022”.
- (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 (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.
- (8) In section 7(**16**) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

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

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

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

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

(9) In Schedule A1(17) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—

“(2) But see article 35(3) (acquisition of subsoil or airspace only) of the A428 Black Cat to Caxton Gibbet Development Consent 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(18) (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 33 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Commencement Information

I11 Art. 34 in force at 8.9.2022, see [art. 1](#)

Acquisition of subsoil or airspace only **E+W**

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

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

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

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as modified by article 33 (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)(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.

Commencement Information

I12 Art. 35 in force at 8.9.2022, see [art. 1](#)

Rights under or over streets **E+W**

36.—(1) Provided that it has given the street authority for the street in question at least 28 days' prior notice (or such shorter period as the street authority may agree), the undertaker may enter on and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may

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

(18) Section 125 was amended by section 216(3) of, and paragraph 17 of Schedule 16 to, the Housing and Planning Act 2016.

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

be required for the purposes of the authorised development and may use the subsoil or airspace for those purposes or any other purpose ancillary to the authorised development.

(2) Subject to paragraph (3), the undertaker may exercise any power conferred by paragraph (1) in relation to a street without being required to acquire any part of the street or any easement or right in the street.

(3) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(4) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) to any person who is a statutory 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.

Commencement Information

I13 Art. 36 in force at 8.9.2022, see [art. 1](#)

Temporary use of land for carrying out the authorised development **E+W**

37.—(1) The undertaker may, in connection with the carrying out of the authorised development, but subject to article 26 (time limit for exercise of authority to acquire land compulsorily)—

- (a) enter on and take possession of—
 - (i) the land specified in columns (1) and (2) of Schedule 7 (land of which 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 other 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 (execution of declaration) of the 1981 Act(21);
- (b) remove any electric line, electrical plant, structures, apparatus, buildings and vegetation from that land;
- (c) construct temporary works (including the provision of means of access) and buildings or structures on that land; and
- (d) construct any permanent works specified in relation to that land as are mentioned in column (3) of Schedule 7, or any other mitigation works in connection with the authorised development; and
- (e) carry out any soil reprofiling work.

(20) Section 11 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) and sections 186, 187 and 188 of, and Schedules 14 and 16 to, the Housing and Planning Act 2016 (c. 22).

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

(2) 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 and explain the purpose for which entry is taken in respect of land specified under paragraph (1)(a)(ii).

(3) The undertaker may not, without the agreement of the owners of the land, remain in possession of any land under this article—

- (a) in the case of 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 7; or
- (b) in the case of any land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the 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) Before giving up possession of land of which temporary possession has been taken under this article, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to—

- (a) replace a building removed under this article;
- (b) restore the land on which any permanent works have been constructed under paragraph (1)(d);
- (c) remove any ground strengthening works which have been placed on the land to facilitate construction of the authorised development;
- (d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development;
- (e) restore the land on which any soil reprofiling work has occurred; or
- (f) remove any temporary works where this has been agreed with the owners of the land.

(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 1 (determination of questions of disputed compensation) of the 1961 Act.

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

(8) Nothing in this article affects any liability to pay compensation under section 152(22) (compensation in case where no right to claim in nuisance) of the 2008 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).

(9) 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(23) (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

(22) Section 152 was amended by [S.I. 2009/1307](#).

(23) 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).

acquisition of land under this Order by virtue of section 125(24) (application of compulsory acquisition provisions) of the 2008 Act.

(11) Paragraph (1)(a)(ii) 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 27 (compulsory acquisition of rights and imposition of restrictive covenants).

Commencement Information

I14 Art. 37 in force at 8.9.2022, see [art. 1](#)

Temporary use of land for maintaining the authorised development **E+W**

38.—(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 upon and take temporary possession of any land within the Order limits if such 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 explaining the purpose for which entry is taken.

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

- (a) the authorised development or any of its parts;
- (b) the public; 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 practical in the circumstances.

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

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

(7) Any dispute as to the removal of temporary works and restoration of land under paragraph (6) does not prevent the undertaker giving up possession of the land.

(8) 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.

(24) [2008 c. 29](#). Section 125 was amended by paragraph 17, Schedule 16 of the Housing and Planning Act [2016 \(c. 22\)](#).

(9) Any dispute as to a person’s entitlement to compensation under paragraph (8), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(10) Nothing in this article affects any liability to pay compensation under section 152 (compensation in case where no right 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 (8).

(11) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.

(12) Section 13(25) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under 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.

(13) In this article “the maintenance period”, in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that part of the authorised development is first opened for use.

Commencement Information

I15 Art. 38 in force at 8.9.2022, see [art. 1](#)

Statutory undertakers E+W

39.—(1) Subject to the provisions of [^{F3}article 27(3)] (compulsory acquisition of rights and imposition of restrictive covenants), Schedule 9 (protective provisions) and paragraph (2), the undertaker may—

- (a) acquire compulsorily, or acquire new rights or impose restrictive covenants over, any Order land belonging to statutory undertakers; and
- (b) extinguish the rights of, or 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; and
- (b) article 40 (apparatus and rights of statutory undertakers in stopped up streets).

Textual Amendments

F3 Words in [art. 39\(1\)](#) substituted (17.1.2023) by [The A428 Black Cat to Caxton Gibbet \(Correction\) Order 2023 \(S.I. 2023/40\)](#), [art. 1](#), [Sch.](#)

Commencement Information

I16 Art. 39 in force at 8.9.2022, see [art. 1](#)

Apparatus and rights of statutory undertakers in stopped up streets E+W

40.—(1) Where a street is stopped up under article 17 (permanent stopping up and restriction of use of streets and private means of access), any statutory utility whose apparatus is under, in, on,

(25) Section 13 was amended by sections 139 and 148 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).

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 17 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 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—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“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) of the Communications Act 2003⁽²⁶⁾.

Commencement Information

I17 Art. 40 in force at 8.9.2022, see [art. 1](#)

Recovery of costs of new connections **E+W**

41.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 39 (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 [^{F4}article 38 (temporary use of land for maintaining the authorised development)], 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 40 (apparatus and rights of statutory undertakers in stopped up streets) or Part 3 of the 1991 Act applies.

(4) In this paragraph—

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

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

Textual Amendments

F4 Words in [art. 41\(2\)](#) substituted (17.1.2023) by [The A428 Black Cat to Caxton Gibbet \(Correction\) Order 2023 \(S.I. 2023/40\)](#), [art. 1](#), [Sch.](#)

Commencement Information

I18 Art. 41 in force at 8.9.2022, see [art. 1](#)

(26) 2003 c. 21. Section 151 was amended by [S.I. 2011/1210](#).

Changes to legislation:

There are currently no known outstanding effects for the The A428 Black Cat to Caxton Gibbet Development Consent Order 2022, PART 5.