

Deadline 3- T.H. Clements (IP Ref. 20049059)

Proposed changes to Articles, Requirements and drafting of restrictive covenant in Schedule 7 the draft DCO (shown in track changes)

Articles

22. Compulsory acquisition of rights

—(1) Subject to paragraph (2), the undertaker may acquire compulsorily such rights or impose restrictive covenants over the Order land as may be required for any purpose for which that land may be acquired under article 20 (compulsory acquisition of land), by creating them as well as by acquiring rights already in existence, [provided that any new restrictive covenant\(s\) to be created shall not be more restrictive or onerous than the restrictive covenants set out in column \(2\) of Schedule 7.](#)

(2) Subject to the provisions of this article, article 23 (private rights) and article 30 (statutory undertakers), in the case of the Order land specified in column (1) of Schedule 7 (land in which only new rights etc. may be acquired), the undertaker's powers of compulsory acquisition are limited to the acquisition of existing rights over land and the creation and acquisition of such new rights and the imposition of restrictive covenants for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to section 8 and Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act(b), as substituted by paragraph 9 of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights and imposition of new restrictions), where the undertaker creates a right or acquires an existing right over land or imposes a restrictive covenant under paragraph (1), the undertaker is not required to acquire a greater interest in that land.

(4) Schedule 8 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 restrictive covenants.

(5) In any case where the acquisition of existing rights or 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 and impose such restrictive covenants 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.

(7) Subject to the modifications set out in Schedule 8 the enactments for the time being in force with respect to compensation for the compulsory purchase of land are to apply in the case of a compulsory acquisition under this Order in respect of a right by the creation of a new right or imposition of a restriction as they apply to the compulsory purchase of land and interests in land.

(8) So much of the special category land as is required for the purposes of exercising the powers acquired by the undertaker pursuant to this article is discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of those rights.

28. Temporary use of land for carrying out the authorised project

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

(a) enter on and take temporary possession of—

(i) the land specified in column (2) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and

(ii) any other Order land [as is required for the authorised project or to facilitate , or is incidental to it, and](#) 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), haul roads, security fencing, bridges, 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 project;

(e) construct any works, or use the land, as specified in relation to that land in column 3 of Schedule 9 (land of which temporary possession may be taken), or any mitigation works or operations;

(f) construct such works on that land as are mentioned in Part 1 of Schedule 1 (authorised development); and

(g) carry out mitigation works required pursuant to the requirements in Schedule 1.

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

(3) The undertaker must not remain in possession of any land under this article for longer than reasonably necessary and in any event must 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 project specified in relation

to that land in column (4) of Schedule 9 (land of which temporary possession may be taken); or

(b) in the case of land specified in paragraph 1(a)(ii) after the end of the period of one year beginning with the date of completion of the part of the authorised project for which temporary possession of the land was taken, unless the undertaker has, before 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 any building, structure, drain or electric line 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 2 (streets subject to street works); or

(d) restore the land on which any works have been carried out under paragraph (1)(e) or (1)(g) insofar as the works relate to mitigation works identified in the environmental statement or required pursuant to the requirements in Schedule 1.

(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 any power 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, must be determined under Part 1 (determination of disputed compensation) of the 1961 Act.

(7) Nothing in this article affects any liability to pay compensation under section 152 of the 2008 Act (compensation in case where no right to claim in nuisance) or under any other enactment in respect of loss or damage arising from the carrying out of the authorised project, 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) except that the undertaker is not precluded from— (a) acquiring new rights or imposing restrictive covenants over any part of that land under article 22 (compulsory acquisition of rights) to the extent that such land is listed in column (1) of Schedule 7 (land in which only new rights etc. may be acquired); or (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 26 (acquisition of subsoil or airspace only).

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

(10) Section 13 of the 1965 Act(a) (refusal to give possession to acquiring authority) applies to the temporary use of land pursuant to this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 of the 2008 Act (application of compulsory acquisition provisions).

(11) So much of the special category land as is required for the purposes of exercising the powers pursuant to this article is temporarily discharged from all rights, trusts and incidents to which it was previously subject, so far as their continuance would be inconsistent with the exercise of those powers, and only for such time as any special category land is being used under this article

Requirements

18. Code of construction practice

(1) No stage of the onshore transmission works may commence until a code of construction practice (which must accord with the outline code of construction practice) for that stage has been submitted to and approved by the relevant planning authority following consultation, as appropriate, with—

(a) Lincolnshire County Council;

(b) the Environment Agency;

(c) the relevant statutory nature conservation body;

(d) in respect of the surface water drainage strategy referred to in paragraph (2)(b), Anglian Water Services Limited; ~~and~~

(e) if applicable, the MMO; and

(f) the owners of the land [which will be affected by the works] to which the code of construction practice relates.

(2) The code of construction must include—

(a) an air quality management plan (which accords with the outline air quality management plan);

(b) a surface water drainage strategy (which accords with the outline surface water drainage strategy);

(c) a noise and vibration management plan (which accords with the outline noise and vibration management plan);

(d) a health, safety and environment plan;

(e) a stakeholder communications plan;

(f) a site waste management plan (which accords with the outline site waste management plan);

(g) a flood management and response plan;

(h) a pollution prevention and emergency incident response plan (which accords with the outline pollution prevention and emergency incident response plan);

(i)

an artificial light emissions plan; and

(j) a water quality management and mitigation plan. (3) Any code of construction practice submitted under sub-paragraph (1) may cover one or more stages of the onshore transmission works.

(4) All construction works for each stage must be undertaken in accordance with the relevant approved code of construction practice.

31. Soil management plan

—(1) No stage of the onshore transmission works may commence until a soil management plan (which must accord with the outline soil management plan) for that stage has been submitted to and approved by the relevant planning authority in consultation with—

(a) Lincolnshire County Council; and

(b) the owners of the land [which will be affected by the works] to which the soil management plan relates.

(2) The soil management plan must be implemented as approved.

Restrictive covenant

B. A restrictive covenant over the land for the benefit of the remainder of the order land to—

(a) prevent anything being done in or upon the land or any part thereof for the purposes of
—

(i) the construction of any buildings; or

(ii) the [hard] surfacing of the land;

(b) prevent the planting of any trees or shrubs on the land [without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed provided that the proposed trees, or shrubs would not cause damage to the relevant part of the authorised development nor make it materially more difficult to maintain or to access the relevant part of the authorised development)]; which interferes with or might interfere with the exercise of the rights or the use of the cables or in any way render the cables in breach of any statute or regulation for the time being in force

(c) and applicable thereto and without prejudice to the generality of the foregoing to prevent the construction of any buildings on, the surfacing of, the carrying out of any excavations or works to a depth greater than 0.75 metre on or in, or the planting of any trees or shrubs on, the land prevent the carrying out of any excavations or works or agricultural practices to a depth greater than 0.75 metre from the surface of the land,

without the consent in writing of the undertaker (such consent not to be unreasonably withheld or delayed, with consent for trench digging requests relating to waterlogging to be determined within 24 hours, if the proposed activity would not cause damage to the relevant part of the authorised development nor make it materially more difficult to access or maintain the authorised development, with such consent being subject to such reasonable conditions as the undertaker may require) provided that (for the avoidance of doubt)—

- (i) ordinary agricultural practices including but not limited to acts of cultivation including soil preparation, ploughing and sub-soiling, not exceeding 0.75 metres in depth from the surface of the land, do not require the consent of the undertaker; and
- (ii) flushing of land drainage systems, maintenance of outfalls and culverts of land drainage systems, clearance of vegetation (by use of machinery or by hand) and the operation of existing land drainage systems do not require the consent of the undertaker.