
STATUTORY INSTRUMENTS

2014 No. 2384

The Thames Water Utilities Limited
(Thames Tideway Tunnel) Order 2014

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Compulsory acquisition of land

28.—(1) The undertaker may acquire compulsorily so much of the Order land as is required for the authorised project or to facilitate it, or is incidental to it.

(2) As from the date on which a compulsory acquisition notice under section 134(3) (*notice of authorisation of compulsory acquisition*) of the 2008 Act is served or the date on which the Order land, or any part of it, is vested in the undertaker, whichever is the later, all rights, trusts and incidents to which that land or that part of it which is vested (as the case may be) was previously subject shall be discharged or suspended, so far as their continuance would be inconsistent with the exercise of the powers under this Order.

(3) Any person who suffers loss by the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) This article is subject to article 30 (*acquisition of subsoil only*), article 31 (*acquisition of subsoil below 9 metres*) and article 35 (*temporary use of land for carrying out the authorised project*).

Compulsory acquisition of rights

29.—(1) The undertaker may acquire compulsorily the existing rights and create and acquire compulsorily the new rights described in the book of reference and indicated on the land plan.

(2) As from the date on which a compulsory acquisition notice is served or the date on which any new right is vested in the undertaker, whichever is the later, the land over which any new right is, or rights are, acquired shall be 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 that new right.

(3) Subject to section 8 (*other provision as to divided land*) of the 1965 Act, as substituted by article 41 (*acquisition of part of certain properties*), where the undertaker acquires an existing right over land under paragraph (1), the undertaker shall not be required to acquire a greater interest in that land.

(4) Any person who suffers loss as a result of the extinguishment or suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Acquisition of subsoil only

30.—(1) The undertaker may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in article 28(1) (*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 land under paragraph (1), the undertaker shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 41 (*acquisition of part of certain properties*) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Acquisition of land limited to subsoil lying more than 9 metres beneath surface

31.—(1) This article applies to the land specified in Schedule 13 (*land of which only subsoil more than 9 metres beneath surface may be acquired*).

(2) In the case of land to which this article applies, the undertaker may only acquire compulsorily under article 28 (*compulsory acquisition of land*) so much of, or such rights in, the subsoil of the land as may be required for the purposes of the authorised project.

(3) Where the undertaker acquires any part of, or rights in, the subsoil of the land to which this article applies, the undertaker shall not be required to acquire a greater interest in the land or an interest in any other part of it.

(4) References in this article to the subsoil of land are references to the subsoil lying more than 9 metres beneath the level of the surface of the land; and for this purpose “level of the surface of the land” means—

- (a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building;
- (b) in the case of a watercourse or other water area, the level of the surface of the ground nearest to it which is at all times above water level; or
- (c) in any other case, ground surface level.

Power to override easements and other rights

32.—(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 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) In this article “authorised activity” means—

- (a) the erection, construction or maintenance of any part of the authorised project;
- (b) the exercise of any power authorised by this Order; or
- (c) the use of any land (including the temporary use of land).

(3) The interests and rights to which this article applies include any easement, liberty, privilege, right or advantage annexed to land and adversely affecting other land, including any natural right to support and include restrictions as to the user of land arising by the virtue of a contract.

(4) Where an interest, right or restriction is overridden by paragraph (1), compensation—

- (a) shall be payable under section 7 (measure of compensation in case of severance) or 10 (further provision as to compensation for injurious affection) of the 1965 Act; and

(b) shall 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.

(5) 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 (4), and
- (b) fails to discharge that liability,

the liability shall be enforceable against that undertaker.

(6) Nothing in this article shall 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.

Statutory authority to override easements and other rights

33.—(1) The carrying out or use of development authorised by this Order and the doing of anything else authorised by this Order is authorised by virtue of section 158 (*nuisance— statutory authority*) of the 2008 Act, 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 user of land arising by virtue of contract.

(2) The undertaker shall 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 user of land arising by virtue of contract,

authorised by virtue of this Order 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 (*further provision as to compensation for injurious affection*) of the 1965 Act applies to paragraph (2) by virtue of section 152(5) of the 2008 Act.

(5) Any rule or principle applied to the construction of section 10 of the 1965 Act shall be applied to the construction of paragraph (2) (with any necessary modifications).

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

34.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 shall apply as if this Order were a compulsory purchase order and as if the undertaker were a public authority under section 1(2) of the 1981 Act.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as so applied, shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order, the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and

(b) published in a local newspaper circulating in the area in which the land is situated”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted and published.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

(a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or

(b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month”.

(6) In section 5 (earliest date for execution of declaration)—

(a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and

(b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat), in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act in the 1981 Act shall be construed as references to that Act as applied by section 125 of the 2008 Act to the compulsory acquisition of land under this Order.