
STATUTORY INSTRUMENTS

2014 No. 2384

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

PART 3

ACQUISITION AND POSSESSION OF LAND

Supplementary

Acquisition of part of certain properties

41.—(1) This article shall apply instead of section 8(1) of the 1965 Act (*other provisions as divided land*) (as applied by section 125 of the 2008 Act) where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as so applied) in respect of land forming only part of a house, building or manufactory or of land consisting of a house with a park or garden (“the land subject to the notice to treat”); and
- (b) a copy of this article is served on the owner with the notice to treat.

(2) In such a case, the owner may, within the period of 21 days beginning with the day on which the notice was served, serve on the undertaker a counter-notice objecting to the sale of the land subject to the notice to treat which states that the owner is willing and able to sell the whole (“the land subject to the counter-notice”).

(3) If no such counter-notice is served within that period, the owner shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period, the question whether the owner shall be required to sell only the land subject to the notice to treat shall, unless the undertaker agrees to take the land subject to the counter-notice, be referred to the tribunal.

(5) If on such a reference the tribunal determines that the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the owner shall be required to sell the land subject to the notice to treat.

(6) If on such a reference the tribunal determines that only part of the land subject to the notice to treat can be taken—

- (a) without material detriment to the remainder of the land subject to the counter-notice; or
- (b) where the land subject to the notice to treat consists of a house with a park or garden, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house,

the notice to treat shall be deemed to be a notice to treat for that part.

(7) If on such a reference the tribunal determines that—

- (a) the land subject to the notice to treat cannot be taken without material detriment to the remainder of the land subject to the counter-notice; but
- (b) the material detriment is confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land to which the material detriment is confined in addition to the land already subject to the notice, whether or not the additional land is land which the undertaker is authorised to acquire compulsorily under this Order.

(8) If the undertaker agrees to take the land subject to the counter-notice, or if the tribunal determines that—

- (a) none of the land subject to the notice to treat can be taken without material detriment to the remainder of the land subject to the counter-notice or, as the case may be, without material detriment to the remainder of the land subject to the counter-notice and without seriously affecting the amenity and convenience of the house; and
- (b) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice whether or not the whole of that land is land which the undertaker is authorised to acquire compulsorily under this Order.

(9) Where, by reason of a determination by the tribunal under this article, a notice to treat is deemed to be a notice to treat for less land or more land than that specified in the notice, the undertaker may, within the period of 6 weeks beginning with the day on which the determination is made, withdraw the notice to treat; and, in that event, shall pay the owner compensation for any loss or expense occasioned to the owner by the giving and withdrawal of the notice, to be determined in case of dispute by the tribunal.

(10) Where the owner is required under this article to sell only part of a house, building or manufactory or of land consisting of a house with a park or garden, the undertaker shall pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

Statutory undertakers

42.—(1) The undertaker may—

- (a) (further to the power in article 28 (*compulsory acquisition of land*)) acquire compulsorily the order land belonging to statutory undertakers, and described in the book of reference;
- (b) extinguish the rights of, remove or reposition the apparatus belonging to statutory undertakers where such apparatus is anywhere within the Order limits notwithstanding that repositioning may be outside of the Order limits; and
- (c) (further to the power in article 29 (*compulsory acquisition of rights*)) acquire compulsorily the new rights over land belonging to statutory undertakers described in the book of reference and indicated on the land plans.

(2) Schedule 16 (*provision for the protection of specified undertakers*) applies to the power in article 42(1).

(3) Without prejudice to article 42(1)(b) the following provisions (4) and (5) shall apply in relation to apparatus of statutory undertakers not falling within article 42(1)(b).

(4) Subject to the following provisions of this paragraph, sections 271 to 274 of the 1990 Act (*power to extinguish rights of statutory undertakers, etc and power of statutory undertakers etc to remove or re-site apparatus*) shall apply in relation to land falling outside of the Order limits where it is necessary for the purposes of the authorised project to extinguish the rights of statutory undertakers

or to remove or reposition the apparatus belonging to the statutory undertakers, and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential to the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

(5) In the provisions of the 1990 Act as applied by paragraph (1), references to the appropriate Minister are references to the Secretary of State.

Apparatus and rights of statutory undertakers in stopped-up streets

43.—(1) Where a street is stopped up under article 13 (*stopping up of streets*), any statutory utility whose apparatus is under, in, on, along or across the street shall have 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 13, 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 shall—

- (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 shall 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) shall 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 shall not 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 shall 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)) shall, 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) 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 (*interpretation*)(1).

(8) Schedule 16 (provision for the protection of specified undertakers) applies to this article.

Recovery of costs of new connections

44.—(1) Where any apparatus of a public utility undertaker or of a public communications provider is removed under article 42 (*statutory undertakers*) any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be 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) shall not apply in the case of the removal of a public sewer but where such a sewer is removed under article 42, 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,

shall be 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 shall not have effect in relation to apparatus to which article 43 (*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) of the Communications Act 2003(2); and

“public utility undertaker” has the same meaning as in the 1980 Act.

Time limit for exercise of authority to acquire land compulsorily

45.—(1) After the end of the period of 10 years beginning with the day on which this Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act; and
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(3) as applied by article 34 (*application of the Compulsory Purchase (Vesting Declarations) Act 1981*).

(2) The authority conferred by article 35 (*temporary use of land for carrying out the authorised project*) shall cease either at the end of the period referred to in paragraph (1) or at the end of the

(1) 2003 c.21. There are amendments to this Act which are not relevant to this Order.

(2) 2003 c.21. There are amendments to section 151 that are not relevant to this Order.

(3) 1981 c.66.

period as stated in article 35(3), whichever is the longer, save that nothing in this paragraph shall prevent 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.

Private rights of way

46.—(1) Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

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

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights of way over land owned by the undertaker which, being part of or within the order land, is required for the purposes of this Order shall be extinguished on the appropriation of the land by the undertaker for any of those purposes.

(3) Subject to the provisions of this article, all private rights of way over land of which the undertaker takes temporary possession under this Order shall be suspended and unenforceable 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 of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) This article does not apply in relation to any right of way to which section 138 of the 2008 Act (*extinguishment of rights, and removal of apparatus, of statutory undertakers etc.*) or article 42 (*statutory undertakers*) applies.

(6) Paragraphs (1) to (3) shall have effect subject to—

- (a) any notice given by the undertaker before—
 - (i) the completion of the acquisition of 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 shall not apply to any right of way specified in the notice; and

- (b) any agreement made at any time between the undertaker and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (6)(b)—

- (a) is made with a person in or to whom the right of way 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 shall be effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(4) Section 11 is amended by section 34 of, and Schedule 4 to the Acquisition of Land Act 1981 (c.67), section 3 of, and Schedule 1 to the Housing (Consequential Provisions) Act 1985 (c.71) and S.I. 2009/1307.

Public rights of navigation

47.—(1) Subject to paragraphs (3) and (4), and notwithstanding any rule of law, the public rights of navigation shall be—

- (a) temporarily suspended in relation to each area specified in column (4) of Schedule 12 (*the public rights of navigation to be affected by the authorised project*) and as shown on the access plans, for the purposes of constructing or carrying out the work listed at column (3) of Schedule 12; and
- (b) permanently extinguished in relation to each area specified in column (5) of Schedule 12 and as shown on the access plans.

(2) Subject to paragraphs (3) and (4), and notwithstanding any rule of law, the public rights of navigation over any part of the river may be temporarily suspended with the written consent of the Authority given as provided in paragraph 5 of Part 2 of Schedule 16 (*provisions for the protection of specified undertakers*).

(3) Prior to the proposed commencement date of any suspension or extinguishment of the public rights of navigation under paragraph (1) or (2), the undertaker shall give notice to the Authority in accordance with paragraph 6 (1) of Part 2 of Schedule 16.

(4) Following:

- (a) receipt of a notice relating to a suspension or extinguishment under article 47(1); or
- (b) a consent given by the Authority under article 47 (2);

the Authority shall issue a notice to mariners in accordance with the provisions of paragraph 6 (6) of Part 2 of Schedule 16 giving the commencement date and other particulars of the suspension or extinguishment to which the notice or consent relates, and that suspension or extinguishment shall take effect on the date specified and as otherwise described in the notice.

(5) If any of the conditions set out in article 47 (6) is satisfied in relation to any land which forms part of the river and is land over which public rights of navigation have been permanently extinguished pursuant to Article 47(1)(b) the Authority may issue a notice to mariners that the land (or any part of it) is available for navigation, and on the issue of such notice the public rights of navigation shall be re-established in relation to that land.

(6) The conditions referred to in paragraph (5) are the following:

- (a) the authorised development is not commenced on the land within 5 years of the permanent extinguishment of rights over the land pursuant to Article 47(1)(b);
- (b) having been commenced, construction of the authorised development on the land ceases, and for this purpose construction shall be deemed to have ceased if –
 - (i) work to construct or carry out the authorised development has ceased for 20 years; or
 - (ii) the undertaker has confirmed to the Authority in writing that the land is no longer required for the authorised development or that the undertaker does not object to the public rights of navigation over the land being re-established;
- (c) if any tidal work constructed on the land is removed pursuant to paragraph 18 of Part 2 of Schedule 16.

(7) During the period that public rights of navigation are temporarily suspended under this article, the undertaker shall:

- (a) upon application allow reasonable access to the area where such rights of navigation would otherwise apply subject to such conditions as the undertaker may reasonably impose; and
- (b) ensure that houseboats and business boats moored within or affected by the public rights of navigation that are temporarily suspended under this article can be safely serviced by river

and can safely leave and return to their moorings as is reasonably required for maintenance or other purposes.

(8) Where necessary tugs may be used to move houseboats and business boats.

(9) Unrestricted access shall also be provided for the emergency services to attend those houseboats and business boats by river.

(10) The undertaker may not exercise the powers of paragraph (1)(a) or (2) of this article after completion of construction.

Rights under or over streets and city walkways

48.—(1) The undertaker may enter onto and use so much of the subsoil of, or air-space over, any street or city walkway within the Order limits as may be required for the purposes of the authorised project and may use the subsoil or air-space for those purposes.

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

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

(a) any subway, tunnel or underground building; or

(b) any cellar, vault, arch, projection, 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 which is entered onto and used under paragraph (1) without the undertaker acquiring any part of that person's interest in the land, and who suffers loss as a result, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation shall not be payable under paragraph (4) to any person who is an undertaker to whom section 85 of the 1991 Act (*sharing cost of necessary measures*) applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

(6) The undertaker shall as soon as reasonably practicable and in any case no later than 14 days before entering the subsoil or airspace, serve notice of the use under this article, on the owner and or occupier of the subsoil or airspace proposed to be used, and such notice shall be accompanied by plans showing in sufficient detail the subsoil and airspace to be used under this article and upon written request the undertaker shall supply a copy of such notice and plans to the local authority and (if different) the local highway authority.

(7) If at any time following the use pursuant to paragraph (1) the subsoil or airspace is no longer required to be used under this article for the purposes of the authorised project—

(a) the undertaker shall serve notice on the owner that the subsoil or airspace is no longer required; and

(b) upon service of notice to the owner the right of the undertaker to use the subsoil or airspace given by paragraphs (1) and (2) shall cease; and

(c) the undertaker (or if different the owner for the time being of the part of the authorised project occupying the subsoil or airspace) shall within a reasonable time following the written request of the owner to do so, remove its equipment from the subsoil or airspace and restore the subsoil or airspace to the reasonable satisfaction of the owner and deliver up vacant possession of it.

(8) Save in respect of cranes oversailing the highway, the undertaker may not exercise the powers under this article after completion of construction.

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