
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.

Temporary possession of land

Temporary use of land for carrying out the authorised project

35.—(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 columns (1) and (2) of Schedule 14 (*land of which temporary possession may be taken*) for the purpose specified in relation to that land in column (3) of that Schedule 14 relating to the part of the authorised project specified in column (4) of that Schedule 14;

(ii) any other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act (*powers of entry*) (other than in connection with the requisition of rights only) and no declaration has been made under section 4 of the 1981 Act (*execution of declaration*);

(b) remove any buildings and vegetation from that land that reasonably need to be removed in connection with the carrying out of the authorised project;

(c) construct works (including the provision of means of access) and buildings on that land; and

(d) construct any works specified in relation to that land in column (3) of Schedule 14 (*land of which temporary possession may be taken*), or such other works which may be required in addition for mitigation.

(2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land.

(3) The undertaker may not, without the agreement of the owners or any lessee 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 the end of construction work for that part of the authorised

project specified in relation to that land in column (4) of Schedule 14 (*land of which temporary possession may be taken*); or

- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of the end of construction work for which temporary possession of this 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 or has otherwise acquired the land subject to temporary possession.

(4) Before giving up possession of land of which temporary possession has been taken under paragraph 1(a)(i), unless otherwise agreed by the owners of the land, the undertaker shall remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to—

- (a) replace a building removed under this article;
- (b) remove any ground-strengthening works (being either works listed in Schedule 11 of this order or other works to provide safe and stable ground conditions) which have been placed in that land to facilitate construction of the authorised development; or
- (c) remove or reposition any apparatus belonging to statutory undertakers.

(5) Before giving up possession of land of which temporary possession has been taken under paragraph (1)(a)(ii), unless otherwise agreed by the owners of the land, the undertaker shall either acquire the land in accordance with the provisions of paragraph (3)(b) or remove all works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker shall not be required to—

- (a) replace a building removed under this article;
- (b) remove any ground-strengthening works (being either works listed in Schedule 11 of this order or other works to provide safe and stable ground conditions) which have been placed in that land to facilitate construction of the authorised development; or
- (c) remove or reposition any apparatus belonging to statutory undertakers.

(6) The undertaker shall 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, and for the avoidance of doubt this shall include compensation in respect of any loss or damage further to any ground strengthening works within paragraphs (4)(b) or (5)(b) carried out by the undertaker in or on that land.

(7) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (*further provisions as to compensation for injurious affection*) 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 (6).

(9) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 29 (*compulsory acquisition of rights*);
- (b) acquiring any part of the subsoil of (or rights in the subsoil of) of that land under article 30 (*acquisition of subsoil only*);
- (c) carrying out protective works under article 20 (*protective works to buildings and structures*) and remedial works under article 21 (*remedial works to buildings, or apparatus or equipment*); or

(d) carrying out a survey of that land under article 22 (*authority to survey and investigate the land*).

(10) Where the undertaker takes possession of land under this article, the undertaker shall not be required to acquire the land or any interest in it. For the avoidance of doubt this provision shall not affect the right of an owner or lessee of the Order land to make a claim pursuant to section 150 of the 1990 Act (*blight*).

(11) Section 13 of the 1965 Act (refusal to give possession to acquiring authority) shall apply 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).

(12) The undertaker may not exercise the powers under this article after completion of construction.

Temporary use of land for maintaining authorised project

36.—(1) Subject to paragraph (2) the undertaker may—

- (a) enter on and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the authorised project;
- (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 project; 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) shall 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 on and taking temporary possession of land under this article the undertaker shall serve notice of the intended entry on the owners and occupiers of the land. Such notice shall include details of the proposed works.

(4) 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 project for which possession of the land was taken.

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

(6) The undertaker shall 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.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act (*further provisions as to compensation for injurious affection*) or under any other enactment in respect of loss or damage arising from the maintenance of the authorised project, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) Section 13 of the 1965 Act (*refusal to give possession to acquiring authority*) shall apply 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*).

Compensation

Disregard of certain interests and improvements

37.—(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 shall 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 executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration as part of the authorised project 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 executed or the improvement or alteration made as part of the authorised project, directly or indirectly concerned.

Set-off for enhancement in value of retained land

38.—(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 shall 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 project.

(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 29 (*compulsory acquisition of rights*), the tribunal shall 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 project.

(3) The 1961 Act shall have effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

No double recovery

39. Compensation shall not be payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law, or under two or more different provisions of this Order.

Compulsory acquisition of land – incorporation of the mineral code

40. Parts 2 and 3 of Schedule 2 to the Acquisition of Land Act 1981(1) (*minerals*) are incorporated in this Order subject to the modifications that—

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

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,

(1) 1981 c.67. Sub-paragraph (5) of paragraph 1 of Part 1 of Schedule 2 was amended by section 67 of, and paragraph 27(3) of Schedule 9 to, the Coal Industry Act 1994 (c.21) and paragraph 8 of Part 3 of Schedule 2 was amended by section 46 of the Criminal Justice Act 1982 (c.48). There are other amendments to the 1981 Act which are not relevant to this Order.

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*)(2).

(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(3); 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(4) 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 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.

(2) 2003 c.21. There are amendments to this Act which are not relevant to this Order.

(3) 2003 c.21. There are amendments to section 151 that are not relevant to this Order.

(4) 1981 c.66.

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 (5) (*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.

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

(5) 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.

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.