

---

STATUTORY INSTRUMENTS

---

**2005 No. 2222**

**The River Tyne (Tunnels) Order 2005**

**PART 3**

ACQUISITION AND POSSESSION OF LAND

*Powers of acquisition*

**Power to acquire land**

**21.**—(1) The undertaker may acquire compulsorily so much of the land shown on the land plans within the limits of land to be acquired or used and described in the book of reference as may be required for the purpose of or in connection with the authorised works and may use any land so acquired for those purposes or for purposes in connection with or ancillary to its undertaking.

(2) This article is subject to articles 25(2) and 27(8).

**Application of Part I of the Compulsory Purchase Act 1965**

**22.**—(1) Part I of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order and, in respect of section 10 of the 1965 Act, to the appropriation of any land owned or acquired by the undertaker (including land acquired by agreement)—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(1) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part I of the 1965 Act, as so applied, shall have effect as if—

- (a) section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted; and
- (b) in section 11(1) (which confers power to enter on and to take possession of land subject to a notice to treat on giving not less than 14 days' notice) for the reference to 14 days' notice there were substituted—
  - (i) in a case where the notice to treat relates only to the acquisition of subsoil or the acquisition of an easement or other right over the land, a reference to notice of one month, or
  - (ii) in any other case, a reference to notice of 3 months.

**Power to acquire new rights**

**23.**—(1) The undertaker may compulsorily acquire such easements or other rights over any land referred to in paragraph (1) of article 21 as may be required for any purpose for which that land

---

(1) 1981 c. 67.

may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 7 to this Order), where the undertaker acquires a right over land under paragraph (1) the undertaker shall not be required to acquire a greater interest in it.

(3) Schedule 7 to this Order shall have 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.

### **Power to acquire subsoil only**

**24.**—(1) The undertaker may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1) of article 21 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 section 8 of the 1965 Act or article 30 from applying where the undertaker acquires a cellar, vault, arch, basement or other construction forming part of a house, building or factory.

### **Cases where powers of acquisition limited to subsoil**

**25.**—(1) The article applies to the land specified in Schedule 6 to this Order.

(2) In the case of land to which this article applies, the undertaker’s powers of compulsory acquisition under article 21 shall be limited to the acquisition of, or of rights in, so much of the subsoil as may be required for the purposes of the authorised works.

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

### **Vesting declarations**

**26.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(2) shall apply as if this Order were a compulsory purchase order.

(2) In its application by virtue of paragraph (1), the Compulsory Purchase (Vesting Declarations) Act 1981 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 *The London Gazette* and 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”.

---

(2) 1981 c. 66.

(5) In that section, subsections (5) and (6) shall be omitted and at the end there shall be substituted—

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

- (a) he is for the time being entitled to dispose of the fee simple of the land, whether in possession or reversion; or
- (b) he 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 *The London Gazette* or 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 shall be construed as references to that Act as applied to the acquisition of land under article 21(1).

#### *Temporary possession of land*

#### **Temporary use of land for construction of works**

27.—(1) The undertaker may, for the purpose of or in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 8 to this Order for the purposes specified in relation to that land in column (3) of that Schedule relating to the authorised works;
- (b) remove any buildings and vegetation from that land; and
- (c) construct temporary works (including the provision of means of access) and buildings on the land.

(2) Not less than 28 days before entering upon and taking temporary possession of the 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 of the land, remain in possession of the land under this article after the end of the period of two years beginning with the date of completion of the authorised works.

(4) 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; but the undertaker shall not be required to replace any building removed under this article.

(5) 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 powers 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, shall be determined under Part I of the Land Compensation Act 1961(3).

(7) Without prejudice to article 53, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1) except that the undertaker shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 23; or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 24.

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

### **Temporary use of land for maintenance of works**

**28.**—(1) At any time during the maintenance period relating to any of the authorised works, the undertaker may—

- (a) enter upon and take temporary possession of any land within the limits of land to be acquired or used if such possession is reasonably required for the purpose of or in connection with maintaining the authorised works;
- (b) 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 upon 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.

(4) The undertaker may only remain in possession of land under this article for so long as may be reasonably necessary for the purpose for which the 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 powers conferred by 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 I of the Land Compensation Act 1961.

(8) Without prejudice to article 53, nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

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

(10) In this article “the maintenance period”, in relation to any authorised work means the period of 5 years beginning with the date on which such authorised work is opened for use.

## *Compensation*

### **Disregard of certain interests and improvements**

**29.**—(1) In assessing the compensation (if any) payable to any person on the compulsory acquisition from him of 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 the 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 was not reasonably necessary and was undertaken with the intention of 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 he is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

## *Supplementary*

### **Acquisition of part of certain properties**

**30.**—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 22) in any case 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 factory 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 and stating that he 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) in the case of part of land consisting 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) in the case of part of land consisting 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 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) In any case where by virtue 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 if it does so shall pay the owner compensation for any loss or expense occasioned to him 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 part only of a house, building or factory or of land consisting of a house with a park or garden, the undertaker shall pay him compensation for any loss sustained by him due to the severance of that part in addition to the value of the interest acquired.

### **Extinguishment and suspension of private rights of way**

**31.—**(1) All private rights of way over land subject to compulsory acquisition under this Order shall be extinguished—

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

whichever is sooner.

- (2) All private rights of way over land owned by the undertaker which, being within the limits of land to be acquired or used, is required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by the undertaker.

- (3) 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 interference with any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the Land Compensation Act 1961.

(5) This article does not apply in relation to any right of way to which section 271 or 272 of the Town and Country Planning Act 1990<sup>(4)</sup> (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 11 to this Order applies.

### **Use of subsoil**

**32.**—(1) The undertaker may enter upon, take and use so much of the subsoil of any street within the limits of deviation or within the land the subject of article 21(1) as may be required for the purpose of the construction or maintenance of the authorised works without being required to acquire that subsoil or any right therein.

(2) The power under paragraph (1) may be exercised in relation to a street without the undertaker being required to acquire any part of the street or any easement or right in the street.

(3) Any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the undertaker acquiring any part of that person's interest in the land and who suffers loss by the exercise of that power shall be entitled to compensation to be determined in case of dispute under Part I of the Land Compensation Act 1961<sup>(5)</sup>.

(4) Paragraph (2) shall not apply to—

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

(5) Compensation shall not be payable under paragraph (3) to any person who is a statutory undertaker to whom section 85 of the 1991 Act applies, in respect of measures of which the allowable costs are to be borne in accordance with that section.

### **Noise Insulation Regulations**

**33.** The Noise Insulation Regulations 1973<sup>(6)</sup> shall apply to the authorised works as if they were works that were carried out to construct or alter a highway and as if the undertaker were the appropriate highway authority in respect of such works to that highway and the undertaker shall be subject to such duties and have the benefit of such powers as if it were the appropriate highway authority under those regulations.

### **Time limit for exercise of powers of acquisition**

**34.**—(1) Subject to paragraph (2), the powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 27 to enter upon and take temporary possession of land, shall cease at the end of the period of 5 years beginning on the appointed day.

(2) Paragraph (1) shall not prevent the undertaker remaining in possession of land in accordance with article 27 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

---

(4) 1990 c. 8.

(5) 1961 c. 33.

(6) S.I.1973/1363.