

2008 No. 1238

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Teesport (Land Acquisition) Order 2008

Made - - - - - *30th April 2008*

Coming into force - - *21st May 2008*

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[DfT 00001]

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2000(a) for an Order under sections 3 and 5 of the Transport and Works Act 1992(b) (“the 1992 Act”).

The objections to that application have been withdrawn.

The Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in her opinion do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 3rd March 2008.

Accordingly, the Secretary of State, in exercise of the powers conferred on her by sections 3 and 5 of, and paragraphs 3 to 5, 7, 8, 11 and 16 of Schedule 1 to, the 1992 Act makes the following Order:—

PART 1 PRELIMINARY

Citation and commencement

1.—(1) This Order may be cited as the Teesport (Land Acquisition) Order 2008 and shall come into force on 21st May 2008.

(2) The Teesport Acts and Orders 1966 to 2008(c) and this Order may be cited together as the Teesport Acts and Orders 1966 to 2008.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(d);

“the 1965 Act” means the Compulsory Purchase Act 1965(e);

“address” includes any number or address used for the purposes of electronic transmission;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“the Company” means PD Teesport Limited, a company incorporated under the Companies Act 1985(f), whose registered number is 2636007;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“harbour” has the same meaning as in section 3 (Interpretation) of the Tees and Hartlepoons Port Authority Act 1966(g);

“the land plans” means the plans certified by the Secretary of State as the land plans for the purposes of this Order;

“Northern Gateway Container Terminal” means the development of that part of the harbour for which planning permission was granted by Redcar and Cleveland Borough Council on 4th October 2007 and which includes the area in the River Tees to be reclaimed under the provisions of the Teesport Harbour Revision Order 2008(h);

“the tribunal” means the Lands Tribunal; and

“the undertaking” means the harbour undertaking of the Company as authorised from time to time.

(a) S.I. 2000/2190, made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992.

(b) 1992 c. 42.

(c) See article 1(2) of S.I. 2008/1160.

(d) 1961 c. 33.

(e) 1965 c. 56.

(f) 1985 c. 6.

(g) 1966 c. xxv.

(h) S.I. 2008/1160.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space over its surface.

(3) All measurements stated in any description of lands in the book of reference shall be construed as if the words “or thereabouts” were inserted after each measurement.

PART 2 ACQUISITION AND POSSESSION OF LAND

Power to acquire land

3.—(1) Subject to paragraph (2), the Company may acquire compulsorily—

(a) so much of the land shown coloured pink and edged black on the land plans and described in the book of reference; or

(b) such estates, interests, easements, or other rights in or over the land, as may be required for, or in connection with, the Northern Gateway Container Terminal, and may use any land so acquired for, or in connection with, the Northern Gateway Container Terminal or for any other purposes ancillary to the undertaking.

(2) The Company shall not under the powers of this Order acquire compulsorily any interest held by BOC Limited in the land numbered 10 on the land plans.

(3) This article is subject to article 6 (temporary use of land for construction of works).

Application of Part 1 of the Compulsory Purchase Act 1965

4.—(1) Part 1 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—

(a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(a) applies; and

(b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as so applied, shall have effect as if 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.

Power to acquire new rights

5.—(1) The Company may acquire compulsorily such easements or other rights over any land referred to in paragraph (1) of article 3 (power to acquire land) as may be required for any purpose for which that land 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 1), where the Company acquires a right over land under paragraph (1) it shall not be required to acquire a greater interest in that land.

(3) Schedule 1 (modification of compensation and compulsory purchase enactments for creation of new rights) 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.

Temporary use of land for construction of works

6.—(1) The Company may, in connection with the construction of the Northern Gateway Container Terminal—

(a) enter upon and take temporary possession of the land numbered 1a shown coloured pink and edged black on the land plans and described in the book of reference for the purpose of constructing Work No. 1 authorised by the Teesport Harbour Revision Order 2008;

(b) remove any equipment and apparatus (including a conveyor) from that land; and

(c) construct temporary works (including the provision of means of access) on that land.

(a) 1981 c. 67.

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

(3) The Company may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in paragraph (1)(a).

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

(5) The Company 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 1 of the 1961 Act.

(7) Without prejudice to article 13 (no double recovery), 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 Company shall not be precluded from acquiring new rights over any part of that land under article 5 (power to acquire new rights).

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

(10) Section 13 of the 1965 Act shall apply to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 4(1) (application of Part 1 of the Compulsory Purchase Act 1965).

Disregard of certain interests and improvements

7.—(1) In assessing the compensation payable to any person on the 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 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 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 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.

Extinction or suspension of private rights of way

8.—(1) 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 Company, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Company under section 11(1) of the 1965 Act, whichever is the sooner.

(2) All private rights of way over land owned by the Company which, being within the limits of land which may be acquired shown on the land plans, are required for the purposes of this Order shall be extinguished on the appropriation of the land for any of those purposes by the Company.

(3) All private rights of way over land of which the Company takes temporary possession under this Order shall be suspended and unenforceable for as long as the Company 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 271 or 272 of the Town and Country Planning Act 1990(a) (extinguishment of rights of statutory undertakers etc.) applies.

Time limit for exercise of powers of acquisition

9.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force, no notice to treat shall be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 4 (application of Part 1 of the Compulsory Purchase Act 1965).

(2) The powers conferred by article 6 (temporary use of land for construction of works) shall cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph shall prevent the Company remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 3

MISCELLANEOUS AND GENERAL

Statutory undertakers etc.

10. The provisions of Schedule 2 (provisions relating to statutory undertakers etc.) shall have effect.

Certification of plans etc.

11. The Company shall, as soon as practicable after the making of this Order, submit copies of the book of reference and the land plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference and land plans referred to in this Order; and a document so certified shall be admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

12.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 of the Interpretation Act 1978(b) as it applies for the purposes of this article, the proper address of any person in relation to the service on him of a notice or document under paragraph (1) is, if he has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body, and
- (b) in any other case, his last known address at the time of service.

(a) 1990 c. 8.
(b) 1978 c. 30.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and his name or address cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to him by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it), and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement shall be taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that he requires a paper copy of all or any part of that notice or other document the sender shall provide such a copy as soon as reasonably practicable.

(7) A person may revoke his consent to the use of electronic transmission in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) he shall give notice in writing or by electronic transmission revoking any consent given by him for that purpose; and
- (b) such revocation shall be final and shall take effect on a date specified by the person in the notice but that date shall not be less than 7 days after the date on which the notice is given.

(9) This article shall not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

13. 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.

Arbitration

14. Any difference under any provision of this Order, unless otherwise provided for, shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

30th April 2008

Ellis Harvey
Head of Transport and Works Act Orders Unit
Department for Transport

**MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE
ENACTMENTS FOR CREATION OF NEW RIGHTS**

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(a) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over land consisting”;
- (b) for the word “severance” there shall be substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right proposed”; and
- (d) for the words “part is” there shall be substituted the words “right is”.

Application of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (“the tribunal”); and

(a) 1973 c. 26.

- (b) before the tribunal has determined that question the person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Teesport (Land Acquisition) Order 2008(a) (“the Order”) shall, in relation to that person cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(a) S.I. 2008/1238.

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

1. 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 any land acquired or appropriated by the Company under this Order; 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 on 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.

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

3. Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by paragraph 1, 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 Company compensation in respect of expenditure reasonably incurred by him, 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.

4. Paragraph 3 shall not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, 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 Company compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewerage disposal plant.

5. The provisions of the 1990 Act mentioned in paragraph 1, as applied by that paragraph, shall not have effect in relation to apparatus as respects which Part 3 of the New Roads and Street Works Act 1991(a) applies.

6. In this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990(b);

“owner”, in relation to land, has the same meaning as in the Acquisition of Land Act 1981(c);

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(d); and

“public utility undertakers” has the same meaning as in the Highways Act 1980(e).

(a) 1991 c. 22.
 (b) 1990 c. 8.
 (c) 1981 c. 67.
 (d) 2003 c. 21.
 (e) 1980 c. 66.

EXPLANATORY NOTE

(This note is not part of the Order)

The Order confers on PD Teesport Limited power to compulsorily acquire land and rights in or over land in the Tees Dock area in connection with the proposed redevelopment of that area. The Order does not authorise the construction of works or any other development.

A copy of the land plans and the book of reference referred to in the Order may be inspected at the offices of the Company, 17-27 Queen's Square, Middlesbrough TS2 1AH.

2008 No. 1238

**TRANSPORT AND WORKS, ENGLAND
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