

---

STATUTORY INSTRUMENTS

---

**2016 No. 772**

**The York Potash Harbour Facilities Order 2016**

**PART 5**

**POWERS OF ACQUISITION**

**Guarantees in respect of payment of compensation**

**23.**—(1) The undertaker must not exercise a power conferred by this Part unless guarantees or alternative forms of security in respect of the liability of the undertaker to pay compensation under this Part are in place.

(2) The form of guarantee or security referred to in paragraph (1), and the amount guaranteed or secured, must be approved by the local planning authority; but such approval must not be unreasonably withheld.

(3) The undertaker must provide the local planning authority with such information as the local planning authority may reasonably require relating to the interests in the land affected by the exercise of the powers conferred by this Part for the local planning authority to be able to determine the adequacy of the proposed guarantee or security including—

- (a) the interests affected; and
- (b) the undertaker's assessment, and the basis of the assessment, of the level of compensation.

(4) A guarantee or other security given in accordance with this article that guarantees or secures the undertaker's payment of compensation under this Part is enforceable against the guarantor or provider of security by any person to whom such compensation is properly payable.

**Compulsory and other acquisition of rights**

**24.**—(1) The undertaker may create and acquire compulsorily the new rights and impose the restrictions described in Part 1 of Schedule 3 (acquisition provisions).

(2) The undertaker may create and acquire the new rights and impose the restrictions described in Part 2 of Schedule 3 with the consent in writing of the appropriate Crown authority (as defined in the 2008 Act).

(3) Subject to the provisions of this article and to the protective provisions, all private rights over land described in column (1) of Parts 1 and 2 of Schedule 3 are extinguished in so far as their continuance would be inconsistent with the carrying out and use of the authorised development—

- (a) as from the date of the acquisition of the right or the benefit of the restrictive covenant by the undertaker, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the undertaker under Section 11(1)(1) of the 1965 Act in pursuance of the right,

whichever is the earlier.

---

(1) Section 11(1) was amended by Section 34(1) of, and paragraph 12(1) of Schedule 5 to the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1).

(4) Part 3 (modification of compensation and compulsory purchase enactments for the creation of new rights and restrictive covenants) of Schedule 3 has 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 or the imposition of a restrictive covenant.

(5) Subject to section 8 (other provisions as to divided land) of the 1965 Act as substituted by paragraph 5 of Part 2 of Schedule 3, where the undertaker creates a new right in, on, over or under land under paragraph (1) the undertaker is not required to acquire a greater interest in that land.

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

### **Power to override easements and other rights**

**25.**—(1) Any authorised activity undertaken by the undertaker which takes place on land within the Order limits (whether the activity is undertaken by the undertaker or by any person deriving title under it) is authorised by this Order if it is done in accordance with the terms of this Order, regardless of whether 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 the land arising by virtue of a contract.

(2) In this article “authorised activity” means—

- (a) the erection, construction or carrying out, or maintenance of any building or works on land;
- (b) the erection, construction or maintenance of anything in, on, over or under land; or
- (c) the use of any land.

(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) Nothing in this article authorises interference with any right of way or right of laying down, erecting, continuing or maintaining apparatus on, under or over land which is—

- (a) a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking; or
- (b) a right conferred by or in accordance with the electronic communications code on the operator of an electronic communications code network.

(5) Where any interest or right to which this article applies is interfered with or any restriction breached by any authorised activity in accordance with the terms of this article, the interest or right is extinguished, abrogated or discharged at the time that the interference or breach in respect of the authorised activity in question commences.

(6) In respect of any interference, breach, extinguishment, abrogation or discharge under this article, compensation—

- (a) is payable under section 7 (measure of compensation in case of severance) or 10 (further provisions as to compensation for injurious affection) of the 1965 Act; and
- (b) is to be assessed in the same manner and subject to the same rules as in the case of other compensation under those sections in respect of injurious affection 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.

(7) Nothing in this article is to 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.

(8) Nothing in this article is to be construed as restricting the entitlement of any person to compensation.

(9) Where a person deriving title under the undertaker by whom the land in question was acquired or appropriated—

- (a) is liable to pay compensation; and
- (b) fails to discharge that liability,

the liability is enforceable against the undertaker.

### **Compulsory acquisition of land – incorporation of the mineral code**

**26.** Parts 2 and 3 of Schedule 2 (minerals) to the Acquisition of Land Act 1981<sup>(2)</sup> are incorporated in this Order subject to the following modifications—

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

### **Time limit for exercise of authority to acquire land and rights compulsorily**

**27.**—(1) After the end of the period of 5 years beginning on the day on which this Order is made—

- (a) no notice to treat may be served under Part 1 of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 28 (application of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>(3)</sup>).

(2) The authority conferred by article 30 (temporary use of land) ceases at the end of the period referred to in paragraph (1), but nothing in this paragraph prevents the undertaker remaining in possession of the land after the end of that period, if the land was entered and possession taken before the end of that period, subject to the limitation in article 30(3).

### **Application of the Compulsory Purchase (Vesting Declarations) Act 1981**

**28.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981 applies as if this Order was a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must 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.”

---

(2) 1981 c. 67. Part 3 of Schedule 2 was amended by section 46 of the Criminal Justice Act 1982 (c. 48) and S.I. 2009/1307.

(3) 1981 c. 66.

(4) In that section, in subsection (2), for “(1)(b)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(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” insert “in a local newspaper circulating in the area in which the land is situated”; and
- (b) omit subsection (2).

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

(8) References to the 1965 Act in the Compulsory Purchase (Vesting Declarations) Act 1981 are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act to the compulsory acquisition of land and rights under this Order.

### **Rights under or over streets**

**29.**—(1) The undertaker may enter on and create the new rights and impose the restrictions described in the book of reference over so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised development and may use the subsoil or air-space for those purposes or any other purpose ancillary to the authorised development.

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

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

- (a) any existing subway or underground building; or
- (b) any existing cellar, vault, arch 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 appropriated under paragraph (1) without the undertaker acquiring any part of that person’s interest in the land, and who suffers loss as a result, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(5) Compensation is not 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.

### **Temporary use of land**

**30.**—(1) The undertaker may, in connection with the carrying out of the authorised development—

(a) enter into and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 4 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column

- (3) of that Schedule relating to the part of the authorised development specified in column (4) of that Schedule; and
- (ii) any of the Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;
- (b) remove any buildings and vegetation from that land; and
- (c) construct and use temporary works (including the provision of means of access) and buildings on that land.
- (2) Not less than 14 days before entering on and taking temporary possession of land under this article the undertaker must serve notice in writing 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 any land under this article—
- (a) in the case of land specified in paragraph (1)(a)(i), after the end of the period of 1 year beginning with the date of completion of the part of the authorised development specified in relation to that land in column (4) of Schedule 4; or
- (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of 1 year beginning with the date of completion of the work for which temporary possession of that 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 Compulsory Purchase (Vesting Declarations) Act 1981 in relation to that land 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 this article unless otherwise agreed by the owners of the land, the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the undertaker is not required to replace a building removed under this article.
- (5) The undertaker must 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.
- (6) Any dispute to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (7) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the carrying out of the authorised development, other than loss or damage for which compensation is payable under paragraph (5).
- (8) The undertaker may not compulsorily acquire under this Order the land referred to in paragraph (1)(a)(i) except that the undertaker is not precluded from acquiring new rights over or imposing restrictions over any part of that land under article 24 (compulsory and other acquisition of rights);
- (9) Where the undertaker takes possession of land under this article, the undertaker is not required to acquire the land or any interest in it.
- (10) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under the powers conferred by paragraph (1) to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.
- (11) Subject to paragraph (12) and the protective provisions, at any time during the maintenance period relating to any part of the authorised development, 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 development;
  - (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 development; 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.
- (12) Paragraph (11) does not authorise the undertaker to take temporary possession of any building if it is for the time being occupied.
- (13) Not less than 28 days before entering on and taking temporary possession of land under paragraph (11) the undertaker must serve notice of the intended entry on the owners and occupiers of the land.
- (14) The undertaker may only remain in possession of land under paragraph (11) for so long as may be reasonably necessary to carry out the maintenance of the part of the authorised development for which possession of the land was taken.
- (15) Before giving up possession of land of which temporary possession has been taken under paragraph (11), the undertaker must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (16) The undertaker must pay compensation to the owners and occupiers of land of which temporary possession is taken under paragraph (11) for any loss or damage arising from the exercise in relation to the land of the powers conferred by that paragraph.
- (17) Any dispute as to a person's entitlement to compensation under paragraph (16), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.
- (18) Nothing in this article affects any liability to pay compensation under section 10(2) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the maintenance of the authorised development, other than loss or damage for which compensation is payable under paragraph (16).
- (19) Where the undertaker takes possession of land under paragraph (11), the undertaker is not required to acquire the land or any interest in it.
- (20) Section 13 (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under the powers conferred by paragraph (11) to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of section 125 (application of compulsory acquisition provisions) of the 2008 Act.
- (21) In this article "the maintenance period", in relation to any part of the authorised development, means the period of 5 years beginning with the date on which that phase of the authorised development is brought into use.