
STATUTORY INSTRUMENTS

2018 No. 574

The Silvertown Tunnel Order 2018

PART 3

POWERS OF ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Compulsory acquisition of land

19.—(1) TfL may acquire compulsorily so much of the Order land as is required for the authorised development, or to facilitate it, or as is incidental to it.

(2) This article is subject to article 22(2) (compulsory acquisition of rights), article 27(2) (acquisition of subsoil, etc., only) and article 29 (temporary use of land for carrying out the authorised development).

Compulsory acquisition of land – incorporation of the minerals code

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

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

Time limit for exercise of powers to possess land temporarily or to acquire land compulsorily

21.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 (compulsory purchase under Acquisition of Land Act of 1946) of the 1965 Act; and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 26 (application of the 1981 Act),

in relation to any part of the Order land.

(2) The authority conferred by article 29 (temporary use of land for carrying out the authorised development) ceases at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents TfL from 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.

Compulsory acquisition of rights

22.—(1) Subject to paragraphs (2), (3) and (5), TfL may acquire such rights over the Order land or impose restrictive covenants affecting the land as may be required for any purpose for which that

land may be acquired under article 19 (compulsory acquisition of land), by creating them as well as acquiring rights already in existence.

(2) In the case of the Order land specified in columns (1) and (2) of Schedule 4 (land in which only new rights etc., may be acquired) TfL's powers of compulsory acquisition are limited to the acquisition of such wayleaves, easements, new rights in the land or the imposition of restrictive covenants as TfL may require for or in connection with the authorised development.

(3) Subject to Schedule 2A(1) (counter-notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 10 of Schedule 5 (modification of compensation and compulsory purchase enactments for creation of new rights), where TfL acquires a right over land or the benefit of a restrictive covenant, TfL is not required to acquire a greater interest in that land.

(4) Schedule 5 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application 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) TfL may not under paragraph (1) impose restrictive covenants affecting the land situated within any of the Regions mentioned in article 52.

Private rights over land

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

- (a) from the date of acquisition of the land by TfL, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by TfL under section 11(1) (powers of entry) of the 1965 Act,

whichever is the earlier.

(2) Subject to the provisions of this article, all private rights over land subject to the compulsory acquisition of rights or the imposition of restrictive covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or burden of the restrictive covenant—

- (a) from the date of the acquisition of the right or the benefit of the restrictive covenant by TfL, whether compulsorily or by agreement; or
- (b) on the date of entry onto the land by TfL under section 11(1) of the 1965 Act (power of entry),

whichever is the earlier.

(3) Subject to the provisions of this article, all private rights over any part of the Order land that is vested in or acquired by TfL are extinguished on commencement of any activity authorised by this Order which interferes with or breaches those rights.

(4) Subject to the provisions of this article, all private rights over land of which TfL takes temporary possession under this Order are suspended and unenforceable for as long as TfL remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishment or suspension of any private right or by the imposition of any restrictive covenant under this article is entitled to compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(6) This article does not apply in relation to any right to which section 138 (extinguishment of rights, and removal of apparatus, of statutory undertakers etc.) of the 2008 Act or article 31 (statutory undertakers) applies.

(1) As inserted by paragraphs 1 and 3 of Schedule 17 to the Housing and Planning Act 2016 (c. 22).

- (7) Paragraphs (1) to (4) have effect subject to—
- (a) any notice given by TfL before—
 - (i) the completion of the acquisition of the land or the acquisition of the rights or the imposition of restrictive covenants over or affecting the land;
 - (ii) TfL’s appropriation of it;
 - (iii) TfL’s entry onto it; or
 - (iv) TfL’s taking temporary possession of it,that any or all of those paragraphs do not apply to any right specified in the notice; and
 - (b) any agreement made at any time between TfL and the person in or to whom the right in question is vested or belongs.
- (8) If any such agreement as is referred to in paragraph (7)(b)—
- (a) is made with a person in or to whom the right 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 is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) References in this article to private rights over land include any right of way, trust, incident, 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 virtue of a contract, agreement or undertaking having that effect.

Power to override easements and other rights

24.—(1) Any authorised activity which takes place on land within the Order limits (whether the activity is undertaken by TfL or by any person deriving title from TfL or by any contractors, servants or agents of TfL) 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 development;
 - (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) is payable under section 7 (measure of compensation in case of severance) or section 10 (further provision 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 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 TfL 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 is enforceable against TfL.

(6) 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.

Modification of Part 1 of the 1965 Act

25.—(1) Part 1 of the 1965 Act, as applied to this Order by section 125 (application of compulsory acquisition provisions) of the 2008 Act, is modified as follows.

(2) In section 4A(1)(2) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 4” substitute “section 118 of the Planning Act 2008 (legal challenges relating to applications for orders granting development consent), the five year period mentioned in article 21 (time limit for exercise of powers to possess land temporarily or to acquire land compulsorily) of the Silvertown Tunnel Order 2018(3)”.

(3) In section 11A(4) (powers of entry: further notice of entry)—

- (a) in subsection (1)(a), after “land” insert “under that provision”;
- (b) in subsection (2), after “land” insert “under that provision”.

(4) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 21 of the Silvertown Tunnel Order 2018”.

(5) In Schedule 2A (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 27(4) (acquisition of subsoil, etc., only) of the Silvertown Tunnel Order 2018, which excludes the acquisition of subsoil or airspace only from this Schedule”; and

(b) after paragraph 29, end insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 15 (protective works to buildings), 29 (temporary use of land for carrying out the authorised development) or 30 (temporary use of land for maintaining the authorised development) of the Silvertown Tunnel Order 2018.”

Application of the 1981 Act

26.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

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

(3) In section 1 (application of Act) for subsection (2) substitute—

(2) As inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(3) S.I. 2018/574.

(4) As inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

“(2) This section applies to any Minister, any local or other public authority or any other body or person authorised to acquire land by means of a compulsory purchase order.”

(4) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(5) Omit section 5A(5) (time limit for general vesting declaration).

(6) In section 5B(6) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 118(7) (legal challenges relating to applications for orders granting development consent) of the Planning Act 2008, the five year period mentioned in article 21 of the Silvertown Tunnel Order 2018”.

(7) In section 6(8) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 134(9) (notice of authorisation of compulsory acquisition) of the Planning Act 2008”.

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

(9) In Schedule A1(10) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 27(4) (acquisition of subsoil, etc., only) of the Silvertown Tunnel Order 2018(11), which excludes the acquisition of subsoil or airspace only from this Schedule.”

(10) References to the 1965 Act in the 1981 Act are to be construed as references to the 1965 Act as applied by section 125 (application of compulsory acquisition provisions) of the 2008 Act (and as modified by article 25 (modification of Part 1 of the 1965 Act)) to the compulsory acquisition of land under this Order.

Acquisition of subsoil, etc., only

27.—(1) TfL may acquire compulsorily so much of, or such rights over, the subsoil of and airspace over the land referred to in paragraph (1) of article 19 (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) In the case of the Order land specified in columns (1) and (2) of Schedule 6 (land in which only subsoil or new rights above subsoil and surface may be acquired) TfL’s powers of compulsory acquisition under article 19 are limited to—

(a) the acquisition of such subsoil; and

(b) the acquisition of such easements or other new rights and the imposition of restrictive covenants in the remaining subsoil and the surface of the land,

as TfL may require for or in connection with the authorised development.

(3) Where TfL acquires any part of, or rights over, the subsoil or surface of or airspace over land referred to in paragraphs (1) or (2), TfL is not required to acquire an interest in any other part of the land.

(5) As inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(6) As inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(7) As amended by paragraphs 1 and 59 of Schedule 13, and Part 20 of Schedule 25, to the Localism Act 2011 (c. 20) and section 92(4) of the Criminal Justice and Courts Act 2015 (c. 2).

(8) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(9) As amended by section 142 of, and Part 21 of Schedule 25 to, the Localism Act 2011 (c. 20) and S.I. 2017/16.

(10) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(11) S.I. 2018/574.

(4) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(5) Paragraphs (3) and (4) are to be disregarded where TfL acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

(6) References in paragraph (2)(a) to subsoil are references to the subsoil lying at and below the depths specified in column (3) of Schedule 6 beneath the level of the surface of the land, and references to the remaining subsoil in paragraph (2)(b) are references to the part of the subsoil lying above the shallowest part of the subsoil acquired under paragraph (2)(a) but below the level of the surface of the land.

(7) For the purposes of paragraph (6) “the 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 river, dock, canal, navigation, watercourse or other water area, the level of the surface of the ground covered by water; or
- (c) in any other case, ground surface level,

at the time of this Order coming into force.

Rights over or under streets

28.—(1) TfL may enter on, appropriate and use so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised development.

(2) Subject to paragraph (3), TfL 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 subway or underground building; or
- (b) any 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 in respect of which the power of appropriation conferred by paragraph (1) is exercised without TfL 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 (sharing cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.