
STATUTORY INSTRUMENTS

1998 No. 3269

**The Tyne and Wear Passenger
Transport (Sunderland) Order 1998**

PART III

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 deposited plans within the limits of deviation or the further limits and described in the book of reference as may be required for the purposes of or in connection with the authorised works and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its railway undertaking.

(2) Without prejudice to the generality of paragraph (1) above, the undertaker may acquire compulsorily for the purposes specified in column (1) of Schedule 6 to this Order all or any of the land shown on the deposited plans within the further limits and so described in the book of reference as is referred to in columns (2) and (3) of that Schedule.

(3) This article is subject to articles 26(2), 28 and 29(8) below.

Application of Compulsory Purchase (Vesting Declarations) Act 1981

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

(a) (2) (a) In its application by virtue of paragraph (1) above, the Compulsory Purchase (Vesting Declarations) Act 1981 shall have effect with the following modifications.

(b) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 below with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) below 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 one or more local newspapers circulating in the locality of the authorised works.”.

(c) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)”.

(1) 1981 c. 66.

- (d) 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.”.
- (e) In section 5 (earliest date for execution of declaration)—
- (i) in subsection (1), after “publication” there shall be inserted “in the London Gazette or in one or more local newspapers circulating in the area in which the land is situated”, and
- (ii) subsection (2) shall be omitted.
- (f) 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.
- (g) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 21 above.

Application of Part I of Compulsory Purchase Act 1965

23.—(1) Part I of the 1965 Act, insofar 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(2) 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.

Powers to acquire new rights

24.—(1) The undertaker may compulsorily acquire such easements or other rights over any land referred to in paragraph (1) of article 21 above (subject to paragraph (3) of that article) 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 7 to this Order), where the undertaker acquires a right over land under paragraph (1) above 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.

Powers to acquire subsoil only

25.—(1) The undertaker may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1) of article 21 above (subject to paragraph (3) of that article) 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 the subsoil of land under paragraph (1) above it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) above shall not prevent article 33 below from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

Cases where powers of acquisition limited to subsoil

26.—(1) This article applies to the lands in the city of Sunderland numbered 34 to 40 in the book of reference and on the deposited plans.

(2) In the case of land to which this article applies, the undertaker's powers of compulsory acquisition under article 21 above shall be limited to the acquisition of, or of rights in, so much of the land as is comprised in the existing Sunderland North tunnel (including the subsoil beneath the tunnel) as may be required for the purposes of the authorised works.

(3) Where the undertaker acquires any part of, or rights in, 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.

(4) This article is without prejudice to sub-paragraph (2) of paragraph 5 of Schedule 10 to this Order.

Rights under or over streets

27.—(1) The undertaker may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the limits of deviation or the further limits as may be required for the purposes of or in connection with the authorised works and may use the subsoil and air-space for those purposes or any other purpose connected with or ancillary to the Sunderland extension.

(2) The power under paragraph (1) above 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) The undertaker shall not be required to pay any compensation for the exercise of the powers conferred by paragraph (1) above where the street is a highway; but where the street is not a highway any person suffering 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.

(4) Paragraphs (2) and (3) above shall not apply in relation to—

- (a) any subway or underground building,
- (b) any cellar, vault, arch or other construction in or on a street which forms part of a building fronting on to the street.

Certain lands etc. not to be acquired compulsorily

28. Nothing in this Order shall authorise the undertaker to acquire compulsorily any of the lands mentioned in Schedule 8 to this Order, or any rights over those lands, but the undertaker may acquire

by agreement any part of those lands, or any rights over them, for the purposes of the Sunderland extension.

Temporary possession of land

Temporary use of land for construction of works

- 29.—(1) The undertaker may, in connection with the carrying out of the authorised works—
- (a) enter upon and take temporary possession of, for the purposes specified in column (1) of Schedule 9 to this Order, the land specified in columns (2) and (3);
 - (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 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 any land under this article after the end of the period of one year beginning with the date of completion of the part of the authorised works for the purposes of which possession of the land is taken.

(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 a 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) above, or as to the amount of the compensation, shall be determined under Part I of the Land Compensation Act 1961.

(7) Without prejudice to article 47 below, 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) above.

(8) The powers of compulsory acquisition of land conferred by this Order shall not apply in relation to any land of which temporary possession is taken under paragraph (1) above except that the undertaker shall not be precluded from acquiring new rights over any part of that land under article 24 above.

(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 “building” includes any structure or other erection.

Temporary use of land for maintenance of works

30.—(1) At any time during the maintenance period for the scheduled works, the undertaker may—

- (a) enter upon and take temporary possession of any land within the limits of deviation or the further limits which is within 20 metres from that work if such possession is reasonably

required for the purpose of, or in connection with, maintaining the work or any ancillary works connected with it;

- (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) above 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 to carry out the maintenance works for which possession of the land was taken, and restore the land to the reasonable satisfaction of the owner of the land.

(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 owner 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) above, 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 47 below, 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) above.

(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—

- (a) “the maintenance period”, in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for use;
- (b) “building” includes structure or any other erection; and
- (c) any reference to land within a specified distance of a work includes, in the case of a work under the surface of the ground, a reference to land within the specified distance of the point on the surface below which the work is situated.

Compensation

Disregard of certain interests and improvements

31.—(1) In assessing the compensation (if any) 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) above “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.

Set-off for enhancement in value of retained land

32.—(1) In assessing the compensation payable to any person in respect of the acquisition from him under this Order of any land, 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 him by reason of the Sunderland extension.

(2) In assessing the compensation payable to any person in respect of the acquisition from him of any new rights over land under article 24 above, the tribunal shall set-off against the value of the rights so acquired—

- (a) any increase in 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 him by reason of the Sunderland extension.

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

Supplemental powers

Acquisition of part of certain properties

33.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 23 above) 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 determine 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 determine 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 a reference the tribunal determine 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 determine 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) that 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 only part 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.

Extinction or suspension of private rights of way

34.—(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 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.

(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 I of the Land Compensation Act 1961(3).

(4) This article does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers etc.) applies.

Time limit for exercise of powers of acquisition

35.—(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 shall be served under Part I of the 1965 Act as applied to the acquisition of land by article 23 above;
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 22 above.

(2) The powers conferred by article 29 above shall cease at the end of the period referred to in paragraph (1) above, 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 of it was taken before the end of that period.