

2002 No. 1943

**TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND**

**The Channel Tunnel Rail Link (Thames Tunnel Approach)
Order 2002**

Made - - - - - *22nd July 2002*

Coming into force - - *12th August 2002*

ARRANGEMENT OF ARTICLES

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Whereas 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) made under sections 6, 6A, 7 and 10 of the Transport and Works Act 1992(b) (“the 1992 Act”), for an Order under section 1 of the 1992 Act;

And whereas the objection to the application has been withdrawn and the Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in his opinion do not make any substantial change in the proposals;

And whereas notice of the Secretary of State’s determination was published in the London Gazette on 17th July 2002;

Now, therefore, the Secretary of State, in exercise of the powers conferred on him by sections 1 and 5 of, and paragraphs 1 to 4, 7, 8, 10, 11 and 15 to 17 of Schedule 1 to, the 1992 Act and of all other powers enabling him in that behalf, hereby makes the following Order:—

Citation and commencement

1. This Order may be cited as the Channel Tunnel Rail Link (Thames Tunnel Approach) Order 2002 and shall come into force on 12th August 2002

Interpretation

2. In this Order—

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

“the 1996 Act” means the Channel Tunnel Rail Link Act 1996(d);

“the authorised works” means the earth works and any works authorised by the 1996 Act;

“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 datum line” means the datum line shown on the deposited sections;

“deemed planning permission” means a planning permission which is deemed by a direction under section 90(2A) of the Town and Country Planning Act 1990(e) to be granted in relation to the earth works;

“the deposited plan” means the plan certified by the Secretary of State as the deposited plan for the purposes of this Order;

“the deposited sections” means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;

“the earth works” means the raising of the level of the land authorised by article 11(1) below and the other works so authorised;

“the limit of earth works” means the limit of earth works shown on the deposited plan;

“the limit of land to be acquired” means the limit of land to be acquired shown on the deposited plan;

“the limit of land to be temporarily used” means the limit of land to be temporarily used shown on the deposited plan;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” shall be construed accordingly;

“owner”, in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of the land (whether in possession or reversion) and includes a person holding, or entitled to the rents and profits of, the land under a lease or tenancy having an unexpired term exceeding 3 years; and

“Union Railways” means Union Railways (North) Limited.

(a) S.I. 2000/2190.

(b) 1992 c. 42.

(c) 1965 c. 56.

(d) 1996 c. 61.

(e) 1990 c. 8. Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992.

Power to acquire land

3.—(1) The Secretary of State may acquire compulsorily so much of the land shown on the deposited plan within the limit of land to be acquired and described in the book of reference as may be required for or in connection with the authorised works.

(2) Nothing in section 68 of the Railways Clauses Consolidation Act 1845(a) as applied by the 1996 Act shall require the fencing of land acquired under paragraph (1) above from the adjoining land.

Application of the Compulsory Purchase Act 1965 and the Compulsory Purchase (Vesting Declarations) Act 1981

4.—(1) Part I of the 1965 Act, so far as not inconsistent with this Order, shall apply to an acquisition of land under article 3 above as it applies to a compulsory purchase to which Schedule 1 to the Acquisition of Land Act 1981(b) applies and as if this Order were a compulsory purchase order under that Act.

(2) In its application by virtue of paragraph (1) above, the 1965 Act shall have effect with the following modifications—

- (a) section 4 (time limit for exercise of powers of compulsory purchase) shall be omitted;
- (b) in Schedule 3 (alternative procedure for obtaining right of entry), paragraph 3(3) (requirement as to sureties in relation to bond for compensation) shall be omitted (but without prejudice to the application of section 11(1) of the 1965 Act to the land subject to compulsory purchase under this Order).

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

(4) In its application by virtue of paragraph (3) above, the Compulsory Purchase (Vesting Declarations) Act 1981 shall have effect with the following modifications—

- (a) 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.”;
- (b) in that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)”, and after “given” there shall be inserted “and published”,
- (c) in that section, subsections (5) and (6) shall be omitted and for those subsections 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.”;
- (d) in section 5 (earliest date for execution of declaration)—
 - (i) in subsection (1), after “publication” there shall be inserted “in the London Gazette”, and
 - (ii) subsection (2) shall be omitted;
- (e) 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;
- (f) references to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 3 above.

(a) 1845 c. 20.
(b) 1981 c. 67.
(c) 1981 c. 66.

Compensation for injurious affection

5. Section 10(1) of the 1965 Act (compensation for injurious affection) shall have effect, in relation to land injuriously affected by the execution of the earth works, with the substitution for “acquiring authority have” of “Union Railways has”.

Minerals

6.—(1) Parts II and III of Schedule 2 to the Acquisition of Land Act 1981 (exception of minerals from compulsory purchase and regulation of the working of mines and minerals underlying an authorised undertaking) shall have effect in relation to land to which article 3 above applies as if it were comprised in a compulsory purchase order providing for the incorporation with that order of those Parts of that Schedule.

(2) In their application by virtue of paragraph (1) above, Parts II and III of Schedule 2 to the Acquisition of Land Act 1981 shall have effect with the following modifications—

- (a) references to the acquiring authority, except the second reference in paragraph 6, shall be construed as references to the nominated undertaker for the purposes of Part I of the 1996 Act, and
- (b) references to the undertaking shall be construed as references to the undertaking which the nominated undertaker for the purposes of Part I of the 1996 Act is authorised by that Part to carry on(a).

Disregard of certain interests and improvements

7. Section 4 of the Acquisition of Land Act 1981 (assessment of compensation in relation to a compulsory purchase where unnecessary things done with a view to obtaining compensation) shall have effect in relation to a compulsory purchase under this Order as if it were a compulsory purchase for the purposes of that Act.

Extinguishment 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) in the case of land held by the Secretary of State immediately before the coming into force of this Order, on the coming into force of this Order, and
- (b) in the case of land acquired by the Secretary of State after the coming into force of this Order, at the appropriate time.

(2) For the purposes of paragraph (1)(b) above, the appropriate time is the time of acquisition, except where land—

- (a) is acquired compulsorily, and
- (b) is land in respect of which the power conferred by section 11(1) of the Compulsory Purchase Act 1965 (power of entry following notice to treat) is exercised,

in which case it is the time of entry under that provision.

(3) Any person who suffers loss by the extinguishment of any right of way under this article shall be entitled to be compensated by Union Railways.

(4) Any dispute as to a person’s entitlement to compensation under this article, or as to the amount of such compensation, shall be determined under and in accordance with Part I of the Land Compensation Act 1961(b).

(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 applies.

(a) Union Railways (North) Limited has been specified as the nominated undertaker for the construction and maintenance of the works authorised by the Channel Tunnel Rail Link Act 1996 relevant to this Order by S.I. 1999/391.
(b) 1961 c. 33.

Temporary use of certain land

9.—(1) Union Railways may, in connection with the construction of Work No. 10, or any works which are necessary or expedient for the purposes of or in connection with that work—

- (a) enter upon and take possession of any of the land which is within the limit of land to be temporarily used,
- (b) remove any vegetation from that land, and
- (c) construct temporary works (including the provision of means of access) and structures on that land.

(2) Not less than 28 days before entering upon and taking possession of land under this article, Union Railways shall give notice to the owners and occupiers of the land of its intention to do so.

(3) Union Railways may not remain in possession of any land under this article after the end of the period of one month beginning with the date of completion of Work No. 10 unless the owners of the land agree otherwise.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Union Railways shall remove all temporary works and structures and restore the land in accordance with a scheme agreed with the local planning authority (or in default of agreement determined by the Secretary of State), and shall so restore it to the reasonable satisfaction of that authority and the owners of the land.

(5) All private rights of way over land of which Union Railways takes possession under this article shall be suspended and unenforceable for as long as it remains in lawful possession of the land.

(6) Union Railways shall pay compensation to the owners and occupiers of land of which possession is taken under paragraph (1) above for any loss which they may suffer by reason of the exercise in relation to the land of the powers conferred by that paragraph, and to any person who suffers loss by the suspension of a right under paragraph (5) above.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6) above, or as to the amount of compensation, shall be determined under and in accordance with Part I of the Land Compensation Act 1961.

(8) Nothing in this article shall affect any liability to pay compensation under section 10(2) of the 1965 Act, as applied to the acquisition of land under article 3 above or section 4(1) of the 1996 Act, or under any other enactment, otherwise than for loss for which compensation is payable under paragraph (6) above.

(9) Nothing in this article shall prejudice the power of the Secretary of State under section 4 of the 1996 Act to acquire any land (or as the case may be, the subsoil of any land) which is within the limit of land to be temporarily used.

(10) In this article, "Work No. 10" means Work No. 10 authorised by the 1996 Act.

Time limit for powers of compulsory acquisition

10. After the end of the period of 5 years beginning with the day on which this Order is made—

- (a) no notice to treat shall be served under Part 1 of the 1965 Act, as applied to the acquisition of land under article 3 above;
- (b) no declaration shall be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981, as applied by article 4(3) above.

Earth works

11.—(1) Without prejudice to the powers of Union Railways under the 1996 Act, Union Railways may—

- (a) raise the level of the land within the limit of earth works; and
- (b) carry out and maintain any other works within that limit as may be necessary or expedient for the purposes of, or in connection with, the raising of the level of that land.

(2) The works authorised by paragraph (1)(a) above shall be carried out in accordance with the levels above the datum line which are shown on the deposited sections for those works.

Operational land

12. A deemed planning permission shall be treated as specific planning permission for the purposes of section 264(3)(a) of the Town and Country Planning Act 1990.

Certification of plans etc.

13. Union Railways shall, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plan to the Secretary of State for certification that they are true copies of, respectively, the book of reference, the deposited sections and the deposited plan 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.

Transfer of functions under Order

14.—(1) Subject to paragraphs (2) and (3) below, Union Railways may enter into an agreement with any person (“the transferee”) for the transfer of all or any of its undertaking under this Order, including all or any of the functions, powers or duties of Union Railways under this Order—

- (a) either permanently or for such period as is specified in or determined under the agreement; and
- (b) either unconditionally or subject to such conditions or upon the happening of such events as may be specified in the agreement.

(2) The terms of any agreement made by virtue of paragraph (1) above shall, unless the transferee is the Secretary of State or a nominated undertaker for any purposes of any provisions of Part 1 of the 1996 Act, be subject to the approval of the Secretary of State.

(3) Any agreement or undertaking entered into by Union Railways in connection with the promotion of this Order shall, so far as relevant to any functions, powers or duties under this Order exercisable by the transferee under an agreement made by virtue of paragraph (1) above, be binding on the transferee.

(4) Where an agreement is made by virtue of paragraph (1) above, references to Union Railways in this Order (including references treated by article 15(3)(c) below as substituted in the 1996 Act) shall, to such extent and for such purposes as the agreement so provides, have effect as references to the transferee.

Application of 1996 Act

15.—(1) The following provisions of the 1996 Act shall so far as relevant apply to the earth works and to land held for or in connection with the earth works as they apply to the works authorised by Part I of that Act and land held for or in connection with the works so authorised, that is to say—

- (a) section 8;
- (b) paragraphs 4, 9 and 10 of Schedule 2;
- (c) Schedule 10;
- (d) Parts II to IV of Schedule 15.

(2) The provisions of the 1996 Act referred to in paragraph (1)(b) to (d) above shall so far as relevant also apply to any temporary works carried out under article 9(1) above as they apply to the works authorised by Part I of that Act.

(3) In the application under paragraphs (1) and (2) above of the provisions of the 1996 Act referred to in those paragraphs, in that Act—

- (a) references to the limits of deviation for the scheduled works and the limits of land to be acquired or used shall be treated as references to the limit of land to be acquired as defined in article 2 above and (as the case may be) the limit of land to be temporarily used as so defined,
- (b) references to the 1996 Act and to Part I of that Act shall be treated as references to this Order, and

(c) references to the nominated undertaker shall be treated as references to Union Railways;

and, as regards those provisions as so applied, section 43 of the 1996 Act (including rules made under subsection (2) of that section) shall apply to any arbitration.

(4) Section 54 of the 1996 Act shall apply to the service of any document authorised or required to be served on any person for the purposes of this Order (including any provision of the 1996 Act applied by paragraphs (1) and (2) above).

Termination of development agreement

16.—(1) This article applies where the Secretary of State has entered into a development agreement for purposes connected with the construction or operation of the Channel Tunnel Rail Link, and that agreement has been terminated under provisions contained therein.

(2) Where this article applies, the Secretary of State may by notice in writing transfer to himself or to a nominated undertaker within the meaning of section 34 of the 1996 Act any of the powers, functions, duties or liabilities of Union Railways under this Order, or of any person to whom Union Railways has transferred them.

(3) Where he has transferred such a power, function, duty or liability to himself the Secretary of State may subsequently transfer it to such a nominated undertaker.

(4) In exercising his powers under paragraphs (2) and (3) above, the Secretary of State may deal differently in respect of different parts of the authorised works.

(5) Any notice under paragraph (2) above shall be given by the Secretary of State to Union Railways or to any person to whom Union Railways has transferred any of the powers, functions, duties or liabilities of Union Railways under this Order.

(6) Paragraph (3) of article 14 above shall apply in relation to any transfer of functions, powers or duties to the Secretary of State or a nominated undertaker under this article as it applies in relation to any transfer of functions, powers or duties by virtue of an agreement under paragraph (1) of that article.

Signed by authority of the First Secretary of State

22nd July 2002

Head of Transport and Works Act
Processing Unit,
Office of the Deputy Prime Minister

EXPLANATORY NOTE

(This note is not part of the Order)

This Order makes provision for the following at West Thurrock Marshes between Burnley Road and the river Thames in the borough of Thurrock in connection with the construction of Work No. 10 authorised by the Channel Tunnel Rail Link Act 1996, namely—

- the compulsory acquisition of land within the limit of land to be acquired shown on the deposited plan;
- the raising of land within the limit of earth works shown on that plan; and
- the temporary use of land within the limit of land to be temporarily used shown on that plan.

Copies of the deposited plan, sections and book of reference referred to in the Order may be inspected on weekdays during ordinary office hours in the technical library of Union Railways (North) Limited at 2 Ossulston Street, London NW1 1HT.

£2.00

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