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STATUTORY INSTRUMENTS

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**2012 No. 1867**

**The Ipswich Barrier Order 2012**

**PART 4**

**ACQUISITION AND POSSESSION OF LAND**

*Powers of acquisition*

**Power to acquire land**

**21.** The Agency may acquire compulsorily so much of the land shown on the land plans as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the scheduled works and may use any land so acquired for those purposes or for any other purposes that are ancillary to the scheduled works.

**Commencement Information**

**II** Art. 21 in force at 7.8.2012, see [art. 1](#)

**Application of Part 1 of the Compulsory Purchase Act 1965**

**22.**—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(1) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has 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.

*Status: Point in time view as at 07/08/2012.*

*Changes to legislation: There are currently no known outstanding effects for the The Ipswich Barrier Order 2012, PART 4. (See end of Document for details)*

### Commencement Information

**I2** Art. 22 in force at 7.8.2012, see [art. 1](#)

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

**23.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(2) applies as if this Order were 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) there is substituted—

“(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.”.

(4) In that section, in subsection (2), for “(1)(b)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

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

(7) 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)” is omitted.

(8) References to the 1965 Act is to be construed as references to that Act as applied to the acquisition of land under article 21 (power to acquire land).

### Commencement Information

**I3** Art. 23 in force at 7.8.2012, see [art. 1](#)

### Power to acquire new rights

**24.**—(1) The Agency may compulsorily acquire such easements or other rights over any land referred to in article 21 (power to acquire land) as may be required for any purpose for which that

land may be acquired under that article, 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 3 (modification of compensation and compulsory purchase enactments for creation of new rights)), where the Agency acquires a right over land under paragraph (1) the Agency cannot be required to acquire a greater interest in that land.

(3) 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.

(4) In relation to land to which this paragraph applies, article 21, so far as relating to the acquisition or creation of easements or other rights by virtue of paragraph (1) is to be treated as also authorising acquisition by a statutory utility in any case where the Secretary of State gives consent in writing.

(5) Paragraph (4) applies to land to which article 21 applies and which is or will be required for use in relocating any apparatus which it is expedient to divert or replace in consequence of the carrying out of the authorised works.

**Commencement Information**

**I4** Art. 24 in force at 7.8.2012, see [art. 1](#)

**Power to acquire subsoil only**

**25.**—(1) The Agency may compulsorily acquire so much of, or such rights in, the subsoil of the land referred to in article 21 (power to acquire 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) Where the Agency acquires any part of, or such rights in, the subsoil of land under paragraph (1) it cannot be required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent article 31 (acquisition of part of certain properties) from applying where the Agency acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

**Commencement Information**

**I5** Art. 25 in force at 7.8.2012, see [art. 1](#)

**New rights only to be acquired in certain lands**

**26.** In the case of the land specified in columns (1) and (2) of Schedule 4 (acquisition of new rights only), the Agency's powers of compulsory acquisition under article 21 (power to acquire land) are limited to the acquisition of such easements or other new rights in the land as it may require for the purposes specified in relation to that land in column (3) of that Schedule.

**Commencement Information**

**I6** Art. 26 in force at 7.8.2012, see [art. 1](#)

*Status: Point in time view as at 07/08/2012.*

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### *Temporary possession of land*

#### **Temporary possession of land for construction purposes**

27.—(1) The Agency may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in column (1) of Schedule 5 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (2) of that Schedule;
- (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 14 days before entering upon and taking temporary possession of land under this article the Agency must serve notice of the intended entry on the owners and occupiers of the land.

(3) The Agency 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 2 years beginning with the date of completion of the works.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Agency must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Agency is not required to replace a building removed under this article.

(5) The Agency 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 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, is to be determined under Part 1 of the 1961 Act.

(7) Without affecting article 55 (no double recovery), nothing in this article affects 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 do not apply in relation to land referred to in paragraph (1) except that the Agency is not precluded from—

- (a) acquiring new rights over any part of that land under article 24 (power to acquire new rights) or article 26 (new rights only to be acquired in certain lands); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 25 (power to acquire subsoil only).

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

(10) Section 13 of the 1965 Act applies 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 22(1) (application of Part 1 of the Compulsory Purchase Act 1965).

#### **Commencement Information**

**I7** Art. 27 in force at 7.8.2012, see [art. 1](#)

### **Temporary use of land for maintenance of works**

**28.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, the Agency may—

- (a) enter upon and take temporary possession of any land within the limits of land to be acquired or used if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it; and
- (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) does not authorise the Agency 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 Agency must serve notice of the intended entry on the owners and occupiers of the land.

(4) The Agency 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.

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

(6) The Agency 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 powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Without prejudice to article 55 (no double recovery), nothing in this article affects 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) of this article.

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

(10) Section 13 of the 1965 Act applies 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 22(1) (application of Part 1 of the Compulsory Purchase Act 1965).

(11) In this article, “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.

#### **Commencement Information**

**18** Art. 28 in force at 7.8.2012, see [art. 1](#)

### *Compensation*

### **Disregard of certain interests and improvements**

**29.**—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or

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- (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 the intention of 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 that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

#### Commencement Information

**I9** Art. 29 in force at 7.8.2012, see [art. 1](#)

#### Set-off for enhancement in value of retained land

**30.**—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must 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 that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 24 (power to acquire new rights) or 26 (new rights only to be acquired in certain lands), the tribunal must set-off against the value of the rights so acquired—

- (a) any increase in the 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,
- (3) which will accrue to that person by reason of the construction of the authorised works.

(4) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

#### Commencement Information

**I10** Art. 30 in force at 7.8.2012, see [art. 1](#)

### *Supplementary*

#### Acquisition of part of certain properties

**31.**—(1) This article applies instead of section 8(1) of the 1965 Act (as applied by article 22 (application of Part 1 of the Compulsory Purchase Act 1965)) in any case where—

- (a) a notice to treat is served on a person (“the owner”) under the 1965 Act (as applied) in respect of land forming only part of a house, building or manufactory 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 Agency a counter-notice objecting to the sale of the land subject

to the notice to treat and stating that the owner 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 is 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 is required to sell only the land subject to the notice to treat is, unless the Agency agrees to take the land subject to the counter-notice, to 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 the 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 is 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 the 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 is to 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 is to 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 Agency is authorised to acquire compulsorily under this Order.

(8) If the Agency 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) the material detriment is not confined to a part of the land subject to the counter-notice,

the notice to treat is to 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 Agency 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 specified in the notice, the Agency 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 it must pay the owner compensation for any loss or expense occasioned to the owner 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 manufactory or of land consisting of a house with a park or garden, the Agency must pay the owner

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compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

#### Commencement Information

**I11** Art. 31 in force at 7.8.2012, see [art. 1](#)

### Extinction or suspension of private rights of way etc. over land

**32.**—(1) All private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the acquisition of the land by the Agency, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by the Agency under section 11(1) of the 1965 Act, whichever is sooner.

(2) Unless otherwise agreed with the Agency, all private rights of way over land owned by the Agency which, being within the limits of land to be acquired or used shown on the land plans, are required for the purposes of this Order are extinguished on the appropriation of the land for any of those purposes by the Agency.

(3) All private rights of way over land of which the Agency takes temporary possession under this Order are suspended and unenforceable for as long as the Agency 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 is 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 planning Act (extinguishment of rights of statutory undertakers etc.) applies.

#### Commencement Information

**I12** Art. 32 in force at 7.8.2012, see [art. 1](#)

### Time limit for exercise of powers of acquisition

**33.**—(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 of the 1965 Act as applied to the acquisition of land by article 22 (application of Part 1 of the Compulsory Purchase Act 1965); and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied by article 23 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 27 (temporary possession of land for construction purposes) cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the Agency 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.



**Commencement Information**

**I13** Art. 33 in force at 7.8.2012, see [art. 1](#)

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There are currently no known outstanding effects for the The Ipswich Barrier Order 2012, PART 4.