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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 188**

**The Network Rail (Waverley Steps) Order 2010**

**PART 3**

**ACQUISITION AND POSSESSION OF LAND**

*Powers of acquisition*

**Power to acquire land**

**14.**—(1) Network Rail may acquire compulsorily—

- (a) such of the land described in the book of reference and shown on sheet no. 1 of the Order plans within the limits of deviation; and
- (b) as respects land so described and shown within the Order limits, and specified in Part 1 or Part 2 of Schedule 4, such servitudes or other rights as are authorised by article 16,

as may be required by Network Rail for or in connection with the authorised works.

(2) As respects plot no. 3, the acquisition permitted by paragraph (1) is limited to the acquisition of servitudes or other rights under sub-paragraph (b).

**Acquisition of subsoil, servitudes and other rights**

**15.**—(1) In exercise of any of the powers conferred by article 14 Network Rail may, as regards any land authorised to be acquired under that article, compulsorily acquire—

- (a) so much of the subsoil of the land; and
- (b) such servitudes or other rights in, on or over the land,

as may be required for any purpose for which the land may be acquired under that article.

(2) Servitudes and other rights may be acquired under paragraph (1) by creating them as well as by acquiring servitudes and other rights already in existence.

(3) Section 90 of the 1845 Lands Act and paragraph 20 of Schedule 15 to the 1997 Act (which provide in certain circumstances for the owner of the land to require the compulsory purchase of the whole rather than part of that property) shall not apply to any compulsory purchase under this article or under article 16.

(4) Subject to paragraphs (5) and (6), the Lands Clauses Acts, as incorporated with this Order, shall have effect with the modifications necessary to make them apply to the compulsory acquisition of servitudes or other rights under this article or under article 16 as they apply to the compulsory acquisition of land.

(5) As so having effect, references in those Acts to land shall be treated as, or as including, references to servitudes or other rights or to the land over which such servitudes or other rights are to be exercisable.

(6) Section 61 of the 1845 Lands Act (estimation of purchase money and compensation) shall apply to the compulsory acquisition of such a right as if for the words from “value” to “undertaking” there were substituted the words “extent (if any) to which the value of the land in or over which the right is to be acquired is depreciated by the acquisition of the right”.

### **Purchase of specific servitudes or other new rights**

**16.**—(1) Network Rail may acquire compulsorily in, on or over any of the land specified in columns (1) and (2) of Part 1 of Schedule 4 such permanent servitudes or other new rights as it requires for the purposes mentioned in column (3) of that Part or in order to give effect to any provision of Part 2 of Schedule 8 or article 38.

(2) Network Rail may acquire compulsorily in, on or over any of the land shown specified in columns (1) and (2) of Part 2 of Schedule 4, such temporary new rights as it requires for the purposes mentioned in column (3) of that Part or in order to give effect to any provision of Part 2 of Schedule 8.

### **Imposition of obligations**

**17.**—(1) Network Rail may impose compulsorily as an encumbrance on any land within the Order limits such obligations on that land as it requires for or in connection with the authorised works.

(2) In addition to the powers conferred by paragraph (1), Network Rail may impose compulsorily as an encumbrance on the Balmoral Hotel and, separately, Princes Mall such obligations as it requires in order to give effect to any provision of Part 2 of Schedule 8 or, in the absence of an agreement under article 38, for any purpose which might be provided for in such an agreement.

(3) Without prejudice to the generality of paragraph (2), the obligations imposed under paragraph (2) may include, in relation to the land specified in columns (1) and (2) of Schedule 5, obligations for any purpose specified in relation to that land in column (3) of that Schedule.

(4) An obligation imposed under this article shall be a real burden affecting the land and shall be enforceable in accordance with the 2003 Act as having effect in accordance with this article.

(5) Notwithstanding the provisions of section 90 of the 2003 Act (powers of the Lands Tribunal as respects title conditions), a real burden created in accordance with this article shall remain in full force and effect without limit of time and shall not be capable of discharge, variation or termination except on the application of Network Rail made in accordance with the 2003 Act.

(6) An obligation under paragraph (1), and an obligation under paragraph (2), shall be imposed by—

- (a) the service on every affected person of a notice in writing that complies with paragraph (7); and
  - (b) the recording or registration of a statutory declaration in the General Register of Sasines or the Land Register of Scotland, as the case may be.
- (7) A notice served under paragraph (6)(a) shall—
- (a) state that this Order has come into force;
  - (b) specify the terms of the obligation imposed and identify the burdened property and the benefited property;
  - (c) state that the obligation is a real burden on the land; and
  - (d) notify every affected person that—
    - (i) Network Rail is about to apply for registration of a statutory declaration creating the real burden; and
    - (ii) the real burden will take effect on the date specified in the notice (which shall be not less than 28 days after the date of the notice).

(8) For the purposes of section 4 of the 2003 Act, a statutory declaration referring to a notice served under paragraph (6)(a) and—

- (a) including the information referred to in paragraph (7)(a) to (c); and
- (b) specifying, as the date on which the real burden will take effect, the date specified in the notice,

shall be treated as a constitutive deed.

(9) Network Rail shall pay compensation—

(a) for any obligation imposed under this article that is an affirmative burden, compensation to the owner equivalent to the capitalised cost of compliance with the obligation assessed—

(i) in the case of an obligation relating to an asset, by reference to its present day value; and

(ii) in any other case, by reference to such reasonable period as may be agreed or determined, reasonable allowance being made for the receipt by the owner of compensation in advance of the expenditure to which the compensation relates,

such compensation to be reduced by such sums as would have been payable by the owner in respect of the asset or other thing in the absence of the authorised works, such that the owner is financially in no worse a position than would have been the case had the authorised works not been constructed; and

(b) for any obligation imposed under this article that is a negative burden or an ancillary burden, compensation to any affected person in respect of the amount (if any) by which the value of—

(i) the land on which the obligation is to be imposed; or

(ii) the affected person's interest in that land,

is depreciated by the imposition of the obligation.

(10) Any dispute as to a person's entitlement to compensation under paragraph (9), or as to the amount of compensation, shall be determined by arbitration.

(11) Section 17 of the 1845 Lands Act (as incorporated with this Order by article 23) shall apply to the imposition of obligations under this article, and as so applied shall require notice to treat to be served on any protected person.

(12) In this article—

“affected person” in relation to burdened property means any person who is the owner or tenant of that property or who has the right to use it, and in relation to the service of notice means every person who is an affected person on the date of service;

“asset” means any physical thing other than land, and includes anything erected or placed on or affixed to land;

“Network Rail” includes any successor of Network Rail;

“owner” includes any person who is within the definition of that word in section 123 of the 2003 Act, and in relation to the service of a notice “the owner” means every person who is an owner on the date of service; and

“present day value” means the cost of compliance with the obligation in question assessed by reference to the whole life cycle cost information for the asset (as provided by the asset supplier) and reduced as provided in paragraph (9).

## **Rights in roads or public places**

18.—(1) Network Rail may—

- (a) enter upon and appropriate so much of the subsoil of, or air-space over, any road or public place comprised within plot no. 4, 10, 11, or 12, or shown on sheet no. 1 of the Order plans as an area of temporary stopping up, as may be required for the purposes or in consequence of the authorised works; and
  - (b) use the subsoil or air-space for those purposes.
- (2) Subject to paragraph (3) the powers conferred by paragraph (1) may be exercised in relation to a road or public place without Network Rail being required to acquire any part of the road or place or any servitude or other right in relation to it.
- (3) Paragraph (2) does not apply to—
- (a) any subway or underground building; or
  - (b) any cellar, vault, arch or other construction in or on a road which forms part of a building fronting onto the road or public place.
- (4) Network Rail is not required to pay compensation for the exercise of the powers conferred by paragraph (1) to the roads authority in respect of a public road or to the authority in which any public place is vested.
- (5) Any person other than an authority mentioned in paragraph (4) who—
- (a) is an owner or occupier of land in respect of which the power conferred by paragraph (1) is exercised without Network Rail acquiring any part of that person’s interest in the land; and
  - (b) suffers loss by reason of the exercise of that power,
- shall be entitled to compensation.
- (6) Any dispute as to a person’s entitlement to compensation under paragraph (5), or as to the amount of compensation, shall be determined under the 1963 Act.
- (7) For the purposes of section 28 of the Land Registration (Scotland) Act 1979(1), the powers conferred by this article shall constitute a real right and shall be an overriding interest.

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(1) 1979 c.33. Section 28 includes a definition of “overriding interest” to which there are amendments not relevant to this Order.