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STATUTORY INSTRUMENTS

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**2001 No. 2870**

**The Railtrack (Shortlands Junction) Order 2001**

PART III

ACQUISITION AND POSSESSION OF LAND

*Power of acquisition*

**Power to acquire land**

**13.**—(1) Railtrack may acquire compulsorily so much of the land shown on the deposited plans within the limits of deviation for the scheduled works shown on those plans and described in the book of reference as may be required for or in connection with the authorised works, and may use any land so acquired for those purpose or for any other purposes connected with or ancillary to its railway undertaking.

(2) This article is subject to article 16(8) below.

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

**14.**—(1) Part I of the 1965 Act, in so far 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(1) 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 section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provisions as to the giving of bonds) were omitted.

**Power to acquire new rights**

**15.**—(1) Railtrack may compulsorily acquire such easements or other rights over any land referred to in article 13 above 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) Railtrack may compulsorily acquire a permanent right of access for the purpose of maintaining the authorised works along such route (limited to 5 metres in width) as it may reasonably require over the land shown numbered 18b on the deposited plans.

(3) Railtrack may compulsorily acquire such soil nailing rights in the subsoil of the land shown numbered 2 on the deposited plans as it considers necessary or expedient in connection with the construction of the authorised works.

(4) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 2 to this Order), where Railtrack acquires a right over land under this article it shall not be required to acquire a greater interest in it.

(5) Paragraph (1) above shall be treated as also authorising acquisition of easements or other rights by a statutory utility in any case where the Secretary of State gives his consent in writing.

(6) Paragraph (5) above applies to land within the limits of deviation 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 works authorised by this Order; and in that paragraph “statutory utility” means a licence holder within the meaning of Part I of the Electricity Act 1989<sup>(2)</sup>, a public gas transporter within the meaning of Part I of the Gas Act 1986<sup>(3)</sup>, a water undertaker within the meaning of the Water Industry Act 1991<sup>(4)</sup>, a sewerage undertaker within Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

(7) Schedule 2 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.

(8) In this article “soil nailing rights” means rights to insert soil nails into the subsoil or to carry out other subsoil works for the purposes of strengthening and stabilising the railway cutting.

(9) References in this article to the subsoil of land are references to the subsoil lying more than one metre beneath the level of the surface of the land; and for this purpose “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; or
- (b) in any other case, ground surface level.

### *Temporary possession of land*

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

**16.**—(1) Railtrack may, in connection with the carrying out of the authorised works—

- (a) enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 3 to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised work so specified in column (4) 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 Railtrack shall serve notice of the intended entry on the owners and occupiers of the land.

(3) Railtrack 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 work specified in relation to that land in column (4) of Schedule 3 to this Order.

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

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(2) 1989 c. 29.

(3) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45).

(4) 1991 c. 56.

(5) Railtrack 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 1961 Act.

(7) Without prejudice to article 30 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 the land referred to in paragraph (1) above except that Railtrack shall not be precluded from acquiring new rights under paragraph (2) of article 15 above over the land referred to in that paragraph.

(9) Where Railtrack 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 structure or any other erection.

### *Compensation*

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

17.—(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.

### *Supplementary*

#### **Acquisition of part only of certain properties**

18.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 14 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 Railtrack 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 Railtrack 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 Railtrack is authorised to acquire compulsorily under this Order.

(8) If Railtrack 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 Railtrack 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, Railtrack 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 to 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, Railtrack 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**

**19.**—(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 Railtrack, whether compulsorily or by agreement, or
- (b) on the entry on the land by Railtrack under section 11(1) of the 1965 Act,

whichever is sooner.

(2) All private rights of way over land of which Railtrack takes temporary possession under article 16 above shall be suspended and unenforceable for as long as Railtrack 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 1961 Act.

(4) 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<sup>(5)</sup> (extinguishment of rights of statutory undertakers etc.) applies.

### **Time limit for exercise of power of acquisition**

**20.**—(1) The powers conferred by this Order to acquire land or rights over land compulsorily, and the power conferred by article 16 above to enter upon and take temporary possession of land, shall cease at the end of the period of one year beginning on the day on which this Order comes into force.

(2) Paragraph (1) above shall not prevent Railtrack remaining in possession of land in accordance with article 16 above after the end of that period, if the land was entered and possession of it was taken before the end of that period.

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(5) 1990 c. 8.