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STATUTORY INSTRUMENTS

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**2004 No. 389**

**The Network Rail (West Coast Main Line) Order 2004**

**PART III**

**ACQUISITION AND POSSESSION OF LAND**

*Powers of acquisition*

**Power to acquire land**

**22.**—(1) Subject to paragraph (2), Network Rail may acquire compulsorily—

- (a) 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
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 to this Order as may be required for the purpose specified in relation to that land in column (3) of that Schedule,

and may use any land so acquired for those purposes or for any other purposes connected with or ancillary to its railway undertaking.

(2) Network Rail shall not under the powers of this Order acquire compulsorily any interest in the land delineated on the deposited plans and thereon numbered—

- (a) 109b, 159b, 159c, 210, 211, 212, 213 and 214 in the borough of Tamworth and 176a, 177, 178a, 179, 203a and 203b in the district of Lichfield; and
- (b) 160, 161, 197c, 200a, 202a, 202b, 202c, 202d, 202e, 203a, 205a, 205b, 206a, 239a and 240 in the borough of Tamworth and 176c, 178d and 203d in the district of Lichfield,

except that Network Rail may enter upon and take temporary possession of the land specified in article 36(3) in accordance with that provision.

(3) Notwithstanding paragraph (2), Network Rail may, pursuant to article 24, compulsorily acquire easements or other rights over the land described in paragraph (2)(b).

(4) This article is subject to articles 26, 28(9) and 38.

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

**23.**—(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—

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(1) 1981 c. 67.

- (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.

### **Power to acquire new rights**

**24.**—(1) Subject to article 22(2)(a), Network Rail may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 22 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 9 to this Order), where Network Rail acquires a right over land under paragraph (1) it shall not be required to acquire a greater interest in it.

(3) Schedule 9 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.

(4) In relation to land to which this paragraph applies, article 22, so far as relating to the acquisition or creation of easements or other rights by virtue of paragraph (1), shall be treated as also authorising acquisition by a statutory utility in any case where the Secretary of State gives his consent in writing.

(5) Paragraph (4) applies to land within the Order limits 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 the meaning of Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

### **Power to acquire subsoil only**

**25.**—(1) Subject to article 22(2), Network Rail may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 22 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 Network Rail acquires any part of the subsoil of land under paragraph (1) it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 30 from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

### **Cases where powers of acquisition limited to soil nailing rights**

**26.**—(1) This article applies to the land specified in Schedule 10 to this Order.

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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.

(2) In the case of land to which this article applies, Network Rail’s powers of compulsory acquisition under article 22 shall be limited to the acquisition of soil nailing rights in the subsoil of so much of the land as lies within ten metres of land owned by Network Rail.

(3) Where Network Rail acquires soil nailing rights in the subsoil of 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) 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.

(5) 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.

### **Rights under streets**

**27.**—(1) Network Rail may enter upon and appropriate so much of the subsoil of any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil for those purposes or any other purpose connected with or ancillary to its railway undertaking.

(2) The power under paragraph (1) may be exercised in relation to a street without Network Rail being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (4), any person, who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without Network Rail acquiring any part of that person’s interest in the land and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(4) Paragraph (2) shall not apply in relation to—

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