
STATUTORY INSTRUMENTS

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—

(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⁽²⁾, a public gas transporter within the meaning of Part I of the Gas Act 1986⁽³⁾, a water undertaker within the meaning of the Water Industry Act 1991⁽⁴⁾, 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.

(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.

Temporary possession of land

Temporary use of land for construction of works

28.—(1) Subject to paragraph (13), Network Rail 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 11 to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the works or the facilities (or any of those works or facilities) 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) Without prejudice to the generality of paragraph (1)(c), Network Rail may, in connection with the carrying out of the authorised works, construct—

- (a) a temporary vehicular bridge over the river Tame on the land numbered 22, 34 and 42 on the deposited plans in the district of Lichfield, in the county of Staffordshire; and

- (b) a temporary vehicular bridge over the Coventry Canal on the land numbered 183, 193 and 196 on the deposited plans at Huddlesford in the district of Lichfield, in the county of Staffordshire,

in accordance with the levels shown on the deposited sections but subject to the power to deviate in article 6(2).

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article Network Rail shall serve notice of the intended entry on the owners and occupiers of the land.

(4) Subject to paragraph (13), Network Rail 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 or works, or the date of the provision of the facility or facilities, specified in relation to that land in column (4) of Schedule 11 to this Order.

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

(6) Network Rail 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.

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

(8) Without prejudice to article 43, 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 (6).

(9) Subject to paragraph (10), the powers of compulsory acquisition of land conferred by this Order shall not apply in relation to the land referred to in paragraph (1).

(10) Network Rail shall not be precluded from acquiring over any part of the land referred to in paragraph (1)—

- (a) new rights under article 24, or
- (b) soil nailing rights under article 26.

(11) Where Network Rail takes possession of land under this article, it shall not be required to acquire the land or any interest in it.

(12) In this article "building" includes structure or any other erection.

(13) Where, in relation to land specified in columns (1) and (2) of Schedule 11 to this Order, the purpose specified in column (3) of that Schedule in relation to that land is a right of access—

- (a) references in this article to entering upon and taking possession of land shall be construed as references to using the land as an access and related expressions shall be construed accordingly; and
- (b) paragraphs (1)(b) and (c) and (4) shall not apply.

Compensation

Disregard of certain interests and improvements

29.—(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) “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

30.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 23) 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 Network Rail 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 Network Rail 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 Network Rail is authorised to acquire compulsorily under this Order.

(8) If Network Rail 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 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 Network Rail 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, Network Rail 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 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, Network Rail 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

31.—(1) All private rights of way over land held and used by Network Rail for the purposes of the authorised works or subject to compulsory acquisition under this Order shall be extinguished—

- (a) as from the use by Network Rail of the land for the purposes of the authorised works;
- (b) as from the acquisition of the land by Network Rail, whether compulsorily or by agreement; or
- (c) on the entry on the land by Network Rail under section 11(1) of the 1965 Act,

whichever is sooner.

(2) All private rights of way over land of which Network Rail takes temporary possession under this Order shall be suspended and unenforceable for as long as Network Rail 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⁽⁵⁾ (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 12 to this Order applies.

(5) This article does not apply in relation to any private right of way over—

- (a) land specified in columns (1) and (2) of Schedule 2 to this Order, or
- (b) land specified in columns (1) and (2) of Schedule 11 to this Order,

(5) 1990 c. 8.

where the purpose specified in column (3) of that Schedule in relation to that land is a right of access, except where, or to the extent that, the private right of way is inconsistent with the exercise of the right of access acquired by Network Rail under this Order.

Time limit for exercise of powers of acquisition

32.—(1) No notice to treat shall be served under Part I of the 1965 Act, as applied to the acquisition of land under article 23 after the end of the period of 5 years beginning with the day on which this Order comes into force.

(2) The power conferred by article 28 to enter upon and take temporary possession of land shall cease at the end of the period mentioned in paragraph (1); but this paragraph shall not prevent Network Rail remaining in possession of land in accordance with article 28 after the end of that period, if the land was entered and possession of it was taken before the end of that period.