
STATUTORY INSTRUMENTS

2006 No. 3117

The Network Rail (Thameslink 2000) Order 2006

PART 3

ACQUISITION AND POSSESSION OF LAND

Supplementary

Acquisition of part only of certain properties

31.—(1) This article shall apply instead of section 8(1) of the 1965 Act (as applied by article 25 (application of Part 1 of the Compulsory Purchase Act 1965(1)) 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 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, 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

32.—(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 for the purposes of the authorised works of the land held by Network Rail;

(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 1 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(2) (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 9 (provisions relating to statutory undertakers etc.) to this Order applies.

(5) Paragraphs (1) and (2) shall have effect subject to any agreement made (whether before or after this Order comes into force) between Network Rail and the person entitled to the private right of way.

(6) Paragraph (1) shall have effect subject to any notice given by Network Rail that that paragraph shall not apply to any right of way specified in the notice where the notice is given before whichever is the soonest of the events specified in sub-paragraph (a), (b) or (c) of that paragraph.

(7) Paragraph (2) shall have effect subject to any notice given by Network Rail at any time before or after possession is taken that that paragraph shall not apply to any right of way specified in the notice or shall only apply to the right of way to the extent specified in the notice.

Time limit for exercise of powers of acquisition

33.—(1) No notice to treat shall be served under Part 1 of the 1965 Act, as applied to the acquisition of land under article 25 (application of Part 1 of the Compulsory Purchase Act 1965) 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 29 (temporary use of land for construction of works) 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 29 after the end of that period, if the land was entered and possession of it was taken before the end of that period.

Saving for regulated rights etc.

34. Nothing in this Order shall affect any estate, right or interest granted by Network Rail in respect of a railway facility which is subject to an access contract within the meaning of Part 1 of the Railways Act 1993(3).

Saving for estate and interests of Transport for London

35.—(1) In this article—

“Exemption Order” means the Railways (London Regional Transport) (Exemptions) Order 1994(4);

“TfL Company” has the same meaning as in article 2 of the Exemption Order as amended by section 198 of the Greater London Authority Act 1999(5);

“the 1993 Act” means the Railways Act 1993(6), and

“relevant facilities” means—

- (a) any network on which, or any station or part of a station from which, no regular scheduled railway passenger services are provided other than by a TfL Company;
- (b) any light maintenance depot which is not used in connection with the provision, other than by a TfL Company, of railway passenger services; and
- (c) any train—

(2) 1990 c. 8.

(3) 1993 c. 43.

(4) S.I. 1994/573, as amended by the Greater London Authority Act 1999, section 198 and by S.I. 2003/1615, article 48.

(5) 1999 c. 29.

(6) 1993 c. 43.

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- (i) being used on any such network as is mentioned in paragraph (a) for any purpose relating to the operation of that network, or for a purpose preparatory or incidental to, or consequential on, any such use; or
- (ii) being used on a network for a purpose preparatory or incidental to, or consequential on, the provision of light maintenance service at any such light maintenance depot as is mentioned in paragraph (b),

which at the date of coming into force of this Order are exempted from specified provisions of Part 1 of the 1993 Act by virtue of the Exemption Order.

(2) Nothing in this Order shall prejudice the exemptions conferred on a TfL Company under articles 3 and 4 of the Exemption Order in respect of relevant facilities.

(3) Expressions used in this article and in Part 1 of the 1993 Act shall have the same meaning in this article as in that Act.