
STATUTORY INSTRUMENTS

2006 No. 3117

The Network Rail (Thameslink 2000) Order 2006

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

24.—(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 Part 1, 2, 3 or 4 of Schedule 2 (additional works and land) 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 ancillary to its railway undertaking.

(2) Network Rail shall not under the powers of this Order acquire compulsorily any interest in the land numbered 397, 536 and 542 on the deposited plans in the London borough of Southwark.

(3) Network Rail shall not under the powers of this Order acquire compulsorily any greater interest in the land numbered 540 in the London borough of Southwark than is necessary—

- (a) as a means of access over London Bridge Street for the construction of the London Bridge works; and
- (b) to carry out any related protective works to strengthen the cellar roofs comprising part of that land numbered 540.

(4) This article is subject to articles 29(8) (temporary use of land for construction of works) and 34 (saving for regulated rights etc.).

Application of Part 1 of the Compulsory Purchase Act 1965

25.—(1) Part 1 of the 1965 Act, insofar 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 1 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.

Powers to acquire new rights

26.—(1) Network Rail may compulsorily acquire such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 24 (power to acquire land) 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 7 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 7 (modification of compensation and compulsory purchase enactments for creation of new rights) 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 24 (power to acquire land), 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 1 of the Electricity Act 1989⁽²⁾, a gas transporter within the meaning of Part 1 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 1 of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act.

Powers to acquire subsoil only

27.—(1) Network Rail may compulsorily acquire so much of the subsoil of the land referred to in paragraph (1)(a) or (b) of article 24 (power to acquire land) 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 31 (acquisition of part only of certain properties) from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or factory.

(2) 1989 c. 29.

(3) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995, c. 45, and was further amended by section 76 of the Utilities Act 2000, c. 27.

(4) 1991 c. 56.

Rights under streets

28.—(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 ancillary to its railway undertaking.

(2) Subject to paragraph (4), 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), Network Rail shall not be required to pay any compensation for the exercise of the powers conferred by paragraph (1) where the street is a highway; but where the street is not a highway any owner or occupier of subsoil suffering loss by the entry upon and appropriation of such subsoil shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Paragraphs (2) and (3) 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.

(5) Nothing in paragraph (3) shall relieve Network Rail from liability to compensate any person under section 10(2) of the 1965 Act or under Part 1 of the 1973 Act as applied by this Order, arising from the exercise of the powers conferred by paragraph (1).

Temporary possession of land

Temporary use of land for construction of works

29.—(1) 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 8 (land of which temporary possession may be taken) to this Order for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works (or any of those works) 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 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.

(3) 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 specified in relation to that land in column (4) of Schedule 8 (land of which temporary possession may be taken) to this Order.

(4) 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.

(5) 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.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, shall be determined under Part 1 of the 1961 Act.

(7) Without prejudice to article 50 (no double recovery), 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).

(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) except that Network Rail shall not be precluded from—

- (a) acquiring new rights over any part of that land under article 26 (power to acquire new rights); or
- (b) acquiring any part of the subsoil (or rights in the subsoil) of that land under article 27 (power to acquire subsoil only),

but this paragraph shall not apply in relation to parcel numbers 114 and 116 shown on the deposited plans in the London borough of Southwark.

(9) Where Network Rail 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

30.—(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

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(5))) 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⁽⁶⁾ (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.

(6) 1990 c. 8.

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(7).

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(8);

“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(9);

“the 1993 Act” means the Railways Act 1993(10), 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—
 - (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.

(7) 1993 c. 43.

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

(9) 1999 c. 29.

(10) 1993 c. 43.