
STATUTORY INSTRUMENTS

2011 No. 1072

The Network Rail (Hitchin (Cambridge Junction)) Order 2011

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

17.—(1) Network Rail may acquire compulsorily—

- (a) so much of the land shown on the works and land plans as lying within the limits of deviation as may be required for the purposes of the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 7 (acquisition of certain lands) (being land shown on the works and land plans and described in the book of reference) 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 that are ancillary to its railway undertaking.

(2) This article is subject to articles 21 (new rights, etc., only to be acquired in certain lands) and 24 (temporary use of land for construction of works).

Application of Part 1 of the Compulsory Purchase Act 1965

18.—(1) Part 1 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 1981 Act applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), 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 provision as to the giving of bonds) were omitted.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

19.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(1) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), shall have effect with the following modifications.

- (3) In section 3 (preliminary notices) for subsection (1) there shall be substituted—

(1) 1981 c. 66.

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 18 (application of Part 1 of the Compulsory Purchase Act 1965).

Power to acquire new rights

20.—(1) Network Rail may acquire compulsorily such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 17 (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) Network Rail may impose such restrictive covenants over any land referred to in paragraph (1) (a) or (b) of article 17 which lies, or will on completion of the authorised works lie, beneath the authorised railway as may be required for the purpose of protecting the authorised railway where it is running on the viaduct comprised in Work No. 1.

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights)) where Network Rail acquires a right over land under paragraph (1) or the benefit of a restrictive covenant over land under paragraph (2), Network Rail shall not be required to acquire a greater interest in that land.

(4) Schedule 8 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 or the imposition of a restrictive covenant.

(5) In relation to land to which this paragraph applies, this article, 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 consents in writing.

(6) Paragraph (5) applies to land to which this article applies and 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 work authorised by the 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 local authority for the purposes of section 97 of that Act.

New rights, etc., only to be acquired in certain lands

21.—(1) In the case of land specified in Schedule 9 (land in which new rights, etc., only may be acquired), Network Rail’s powers of compulsory acquisition under article 17 (power to acquire land) shall be limited to—

- (a) the acquisition of such easements or other new rights in the land as it may require for the purposes of constructing, maintaining, protecting, renewing and using the authorised works; or
- (b) where the land lies, or will on completion of the authorised works lie, beneath the authorised railway, the imposition of such restrictive covenants over the land as may be required for the purpose of protecting the authorised railway where it is running on the viaduct comprised in Work No. 1.

(2) Where Network Rail acquires easements or other new rights or acquires the benefit of a restrictive covenant over the land specified in Schedule 9, paragraph (3) of article 20 (power to acquire new rights) shall apply as it applies to the acquisition of a new right under that article.

(3) Nothing in this article shall preclude Network Rail from exercising its powers under article 24 (temporary use of land for construction of works) in the case of land specified in Schedule 9.

Power to acquire subsoil only

22.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of the land referred to in paragraph (1)(a) or (b) of article 17 (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 or rights in 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 28 (acquisition of part of certain properties) from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

23.—(1) Network Rail may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space 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.

(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.

(3) Subject to paragraph (5), 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 1 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, on or under a street which forms part of a building fronting onto the street.

(5) Compensation shall not be payable under paragraph (3) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

(6) Network Rail may exercise the powers conferred by paragraph (1) and appropriate any other land shown on the works and land plans and described in the book of reference as may be required for the purposes of the authorised works, regardless of anything done pursuant to Part 1 of, or Schedule 2 to, the Commons Act 2006⁽⁵⁾.

(5) 2006 c. 26.