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STATUTORY INSTRUMENTS

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**2015 No. 1684**

The Network Rail (Blackthorn and  
Piddington) (Land Acquisition) Order 2015

PART 2

ACQUISITION AND POSSESSION OF LAND

*Powers of acquisition*

**Power to acquire land**

3.—(1) Network Rail may acquire compulsorily so much of the land shown on the land plans within the limits of land to be acquired or used and described in the book of reference as may be required for the purposes of the authorised works and it may use any land so acquired for those purposes or for any other purposes ancillary to the undertaking.

(2) This article is subject to article 7 (temporary possession of land).

**Application of Part 1 of the 1965 Act**

4.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies 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 made under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has 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 1981 Act**

5.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

(2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

(3) In section 3 (preliminary notices) for subsection (1) substitute—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must 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)” substitute “(1)” and after “given” insert “and published”.

(5) In that section, for subsections (5) and (6) substitute—

“(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” insert “in a local newspaper circulating in the area in which the land is situated”; and

(b) omit subsection (2).

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

(8) References to the 1965 Act in the 1981 Act are construed as references to that Act as applied to the acquisition of land under article 3 (power to acquire land).

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

6.—(1) Network Rail may acquire compulsorily such easements or other rights over any land which it is authorised to acquire under article 3 (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 (other provisions as to divided land) of the 1965 Act (as substituted by paragraph 5 of Schedule 1 (modification of compensation and compulsory purchase enactments for creation of new rights), where Network Rail acquires a right over land under paragraph (1) Network Rail is not required to acquire a greater interest in that land.

(3) Schedule 1 has 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.

### *Temporary possession of land*

#### **Temporary possession of land**

7.—(1) Network Rail may, in connection with the carrying out of the authorised works, enter upon and take temporary possession of—

(a) the land specified in columns (1) and (2) of Schedule 2 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule; and

(b) any other land within the limits of land to be acquired or used in respect of which no notice of entry has been served under section 11(2) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 (execution of declaration) of the 1981 Act.

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(2) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(2) Not less than 14 days before entering upon and taking temporary possession of land under this article Network Rail must 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—

(a) in the case of land specified in columns (1) and (2) of Schedule 2, 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 (3) of Schedule 2; or

(b) in the case of land referred to in paragraph (1)(b), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless Network Rail has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land, but Network Rail is not required to replace a building removed in connection with the carrying out of the authorised works.

(5) Network Rail must 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 compensation, is to be determined under Part 1 of the 1961 Act.

(7) Without affecting article 16 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(3) (further provision as to compensation for injurious affection) 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 do not apply in relation to land referred to in paragraph (1)(a) except that Network Rail is not precluded from acquiring new rights over any part of that land under article 6 (power to acquire new rights).

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

(10) Section 13(4) (refusal to give possession to acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the acquisition of land under the Order by virtue of article 4(1) (application of Part 1 of the 1965 Act).

### *Compensation*

#### **Disregard of certain interests and improvements**

**8.—**(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must 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,

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(3) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(4) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

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 that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

### **Set-off for enhancement in value of retained land**

9.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 6 (power to acquire new rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in the value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to that person by reason of the construction of the authorised works.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

## *Supplementary*

### **Acquisition of part of certain properties**

10.—(1) This article applies instead of section 8(1)(5) (other provisions as to divided land) of the 1965 Act (as applied by article 4 (application of Part 1 of the 1965 Act)) 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 manufactory 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 the owner 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 must 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 must sell only the land subject to the notice to treat is, unless Network Rail agrees to take the land subject to the counter-notice, to 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 the 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 must 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 the 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 is 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 is 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 is 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 must pay the owner compensation for any loss or expense occasioned to the owner 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 manufactory or of land consisting of a house with a park or garden, Network Rail must pay the owner compensation for any loss sustained by the owner due to the severance of that part in addition to the value of the interest acquired.

### **Extinction or suspension of private rights of way**

**11.—(1)** Subject to the provisions of this article, all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by Network Rail, whether compulsorily or by agreement; or

- (b) on the date of entry on the land by Network Rail under section 11(1)(6) (powers of entry) of the 1965 Act,

whichever is the sooner.

(2) Subject to the provisions of this article, all private rights of way over land owned by Network Rail which, being within the limits of land to be acquired or used, is required for the purposes of the authorised works, are extinguished on the appropriation of the land for any of those purposes by Network Rail.

(3) Subject to the provisions of this article, all private rights of way over land subject to the compulsory acquisition of rights under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

- (a) as from the date of the acquisition of the right, whether compulsory or by agreement; or  
 (b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act in pursuance of the right,

whichever is the sooner.

(4) Subject to the provisions of this article, all private rights of way over land of which Network Rail takes temporary possession under this Order are suspended and unenforceable for as long as Network Rail remains in lawful possession of the land.

(5) Subject to paragraph (7), any person who suffers loss by the extinguishment or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right of way to which section 271 or 272 (extinguishment of rights of statutory undertakers etc.) of the 1990 Act(7) applies.

(7) Paragraphs (1), (2), (3) and (4) have effect subject to—

- (a) any notice given by Network Rail before the completion of the acquisition of the land, Network Rail's appropriation of it, Network Rail's entry onto it or Network Rail's taking temporary possession of it that any or all of those paragraphs do not apply to any right of way specified in the notice; and  
 (b) any agreement which makes reference to this article (whether made before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of the Order) between Network Rail and the person in or to whom the right of way in question is vested or belongs.

(8) If any such agreement as is mentioned in paragraph (7)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

### **Time limit for exercise of powers of acquisition**

**12.**—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 4 (application of Part 1 of the 1965 Act); and

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(6) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (2006 No. 1) and S.I. 2009/1307.

(7) Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 5 (application of the 1981 Act).

(2) The powers conferred by article 7 (temporary possession of land) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents Network Rail from remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.