

2017 No. 1074

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

**The Network Rail (Closure of Abbots Ripton Level Crossing)
Order 2017**

Made - - - - 17th November 2017

Coming into force - - 8th December 2017

CONTENTS

**PART 1
PRELIMINARY**

1. Citation and commencement
2. Interpretation
3. Dis-application of legislative provisions

**PART 2
CROSSINGS**

4. Power to construct and maintain works
5. Closure of level crossing
6. Creation and maintenance of new public rights of way
Supplemental Powers
7. Power to survey and investigate land

**PART 3
ACQUISITION AND POSSESSION OF LAND**

- Powers of acquisition*
8. Power to acquire new rights
Temporary possession or use of land
 9. Temporary use of land for construction of works
Supplementary
 10. Time limit for exercise of powers of acquisition

PART 4
MISCELLANEOUS AND GENERAL

11. Power to lop trees overhanging the authorised works
12. For protection of lead local flood authority
13. Certification of plans, etc.
14. Service of notices
15. No double recovery
16. Arbitration

SCHEDULE 1 — MODIFICATION OF COMPENSATION AND
COMPULSORY PURCHASE ENACTMENTS FOR
CREATION OF NEW RIGHTS

SCHEDULE 2 — FOR PROTECTION OF LEAD LOCAL FLOOD
AUTHORITY

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(a) for an Order under sections 1 and 5 of the Transport and Works Act 1992(b) (“the 1992 Act”).

The Secretary of State has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 13th November 2017.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 2, 4, 5, 7, 10, 11 and 16 of Schedule 1 to, the 1992 Act makes the following Order:—

PART 1
PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017 and comes into force on 8th December 2017.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(c);

(a) S.I. 2006/1466, as amended by S.I. 2010/439, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590 and S.I. 2013/755
(b) 1992 c. 42. Section 1 was amended by paragraphs 51 and 52 of Schedule 2 to the Planning Act 2008 (c.29). Section 5 was amended by S.I. 2012/1659.
(c) 1961 c. 33.

“the 1965 Act” means the Compulsory Purchase Act 1965(a);

“the 1980 Act” means the Highways Act 1980(b);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(c);

“the 1991 Act” means the New Roads and Street Works Act 1991(d);

“the Abbots Ripton Level Crossing” is the crossing of the East Coast Main Line railway on the level south west of the village of Abbots Ripton in the district of Huntingdonshire, in the County of Cambridgeshire, which has the status of a bridleway;

“address” includes any number or address used for the purposes of electronic transmission;

“the authorised works” means the works authorised by this Order in accordance with article 4 (power to construct and maintain works);

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“bridleway” has the same meaning as in the 1980 Act;

“building” includes any structure or erection or any part of a building, structure or erection;

“the deposited plan” means the plan certified by the Secretary of State as the deposited plans for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

“highway authority” has the same meaning as in the 1980 Act;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and maintenance is to be construed accordingly;

“Network Rail” means Network Rail Infrastructure Limited (company No. 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN;

“new public right of way” means the new bridleway between points C, D, E, F, G and H shown on the deposited plan;

“the Order limits” means the limits of land to be acquired or used shown on the deposited plan;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(e);

“the tribunal” means the Lands Chamber of the Upper Tribunal; and

“the undertaking” means the railway undertaking of Network Rail as existing from time to time.

(2) References in this Order to points identified by letters and numbers are construed as references to a point so shown on the deposited plan.

Dis-application of legislative provisions

3.—(1) Section 6 of the Great Northern Railway Act 1898(f) (power to cross certain roads on the level) is dis-applied in relation to the public road in plots 22 and 24 in the parish of Abbots Ripton with Werrington as shown on the deposited plan for that Act.

(a) 1965 c.56
 (b) 1980 c.66.
 (c) 1981 c. 66
 (d) 1991 c.22.
 (e) 1981 c.67.
 (f) 1898 c. clxv

(2) The following provisions do not apply in relation to any works executed under the powers conferred by this Order—

- (a) section 23 (prohibition on obstacles etc. in watercourses) of the Land Drainage Act 1991(a); and
- (b) the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of that Act, which require consent or approval for the carrying out of the works.

PART 2 CROSSINGS

Power to construct and maintain works

4.—(1) Network Rail may construct and maintain within the Order limits such works as are required:—

- (a) in connection with the extinguishment of the right of way specified in paragraph (2) of article 5 (closure of level crossing);
- (b) to provide the new public right of way;

including the provision of a culvert and any fencing, stiles, gates, signs or other conveniences as may be necessary or expedient for the purposes of the provision or extinguishment of the rights of way.

Closure of level crossing

5.—(1) Subject to paragraph (3), the Abbots Ripton level crossing is stopped-up and discontinued.

(2) Subject to paragraph (3), upon the stopping up and discontinuance of the Abbots Ripton level crossing any rights of way over the crossing are extinguished between points A and B as shown on the deposited plans.

(3) Paragraphs (1) and (2) are not to have effect until the new public right of way has been provided and completed, in accordance with article 6 (creation and maintenance of new public rights of way) and is open to use.

(4) Any person who suffers loss by the extinguishment 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.

(5) This article does not apply so as to extinguish the rights of statutory undertakers to maintain their apparatus.

Creation and maintenance of new public rights of way

6.—(1) The new public right of way is to be completed to the reasonable satisfaction of the highway authority and is to be maintained by and at the expense of Network Rail for a period of 12 months from its completion and after the expiry of that period by and at the expense of the highway authority.

(2) Section 28 (compensation for loss caused by public path creation order) of the 1980 Act is to apply to the new public right of way as if the right of way had been created by a public path creation order.

(a) 1991 c. 59.

(3) In its application by virtue of paragraph (2), section 28 of the 1980 Act is to have effect with the following modifications:—

(a) In sub-section (1), substitute the words “Network Rail” for the words “the authority by whom the Order was made”;

(b) For sub-section (2), substitute—

“(2) A claim for compensation under this section is to be made to Network Rail in writing within 6 months from the coming into force of the Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017^(a) and is to be served on Network Rail by delivering it at, or by sending it by pre-paid post to the registered office of Network Rail Infrastructure Limited”; and

(c) Sub-section (3) is omitted.

(4) Sub-section (3) of section 307 (disputes as to compensation which are to be determined by Lands Tribunal and related provisions) of the 1980 Act, in its application to section 28 by virtue of sub-section (1), is to have effect as if in sub-section (2) for the words “the authority from whom the compensation in question is claimed”, the words “Network Rail” are substituted.

(5) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain the new public right of way, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that Network Rail had taken such care as in all the circumstances was reasonably required to secure that the part of the new public right of way to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

(a) the character of the new public right of way and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a public right of way of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the new public right of way;

(d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new public right of way to which the action relates was likely to cause danger to users of the new public right of way;

(e) where Network Rail could not reasonably have been expected to repair that part of the new public right of way before the cause of action arose, what warning notices of its condition had been displayed;

but for the purposes of such a defence it is not relevant to prove that Network Rail had arranged for a competent person to carry out or supervise the maintenance of the part of the new public right of way to which the action relates unless it is also proved that Network Rail had given the competent person proper instructions with regard to the maintenance of the new public right of way and that the competent person had carried out those instructions.

(7) The new public right of way is to be treated as completed to the satisfaction of the highway authority for the purpose of paragraph (1) if it fails to reply to a request for certification that it is satisfied with the work within 28 days of receiving the request.

Supplemental Powers

Power to survey and investigate land

7.—(1) Network Rail may for the purposes of this Order—

(a) survey or investigate any land shown within the Order limits;

(a) S.I. 2017/1074.

- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as Network Rail thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 14 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of Network Rail—

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph (4);
- (b) may not use force unless a justice of the peace has issued a warrant under paragraph (4) authorising the person to do so; and
- (c) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

- (a) that another person has prevented or is likely to prevent the exercise of that power; and
- (b) that it is reasonable to use force in the exercise of that power.

(5) The force that may be authorised by a warrant is limited to that which is reasonably necessary.

(6) A warrant authorising the person to use force must specify the number of occasions on which Network Rail can rely on the warrant when entering and surveying or valuing land.

(7) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

(8) Any evidence in proceedings for a warrant under this article must be given on oath.

(9) No trial holes are to be made under this article—

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(10) Network Rail must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(11) If either a highway authority or a street authority which receives an application for consent fails to notify Network Rail of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (9)(a) in the case of a highway authority; or
- (b) under paragraph (9)(b) in the case of a street authority,

that authority is deemed to have granted consent.

PART 3
ACQUISITION AND POSSESSION OF LAND
Powers of acquisition

Power to acquire new rights

8.—(1) Network Rail may acquire compulsorily, by the creation of a new right or rights, such easements or other rights over the land within the plots shown numbered 2, 3, 4, 5, 6, 7, 8, 9 and 10 on the deposited plan as it may require for the purposes of construction and maintenance of the authorised works.

(2) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the compulsory acquisition of land under this Order—

(a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(a) applies; and

(b) as if this Order were a compulsory purchase Order under that Act.

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

(4) In section 6 (notices after execution of general vesting declaration) of the 1981 Act as applied by paragraph (3), for the reference to the invitation under section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981, there shall be substituted a reference to the invitation under section 14A(3) of the Transport and Works Act 1992(b).

(5) Schedule 1 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act and the 1981 Act in their application in relation to the compulsory purchase under this article of a right over land by the creation of a new right.

Temporary possession or use of land

Temporary use of land for construction of works

9.—(1) Network Rail may in connection with the carrying out of the authorised works enter upon and take temporary possession of the land within the Order limits for the purposes of provision of a worksite and access and construction of the authorised works on that land.

(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 after the end of the period of one year beginning with the date of completion of the authorised works for the purposes of which temporary possession of that land was taken.

(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 or restore the land on which any permanent works have been constructed under paragraph (1).

(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 the compensation, is to be determined under Part 1 of the 1961 Act.

(a) 1981 c. 67.

(b) Section 14A of the Transport and Works Act 1992 was inserted by article 5 of the Housing and Planning (Compulsory Purchase)(Corresponding Amendments) Regulations 2017 (S.I. 2017/16).

(7) Without affecting article 14 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(a) (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) Where Network Rail takes possession of land under this article, it is not required to acquire the land or any interest in it.

(9) Section 13(b) (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article.

Supplementary

Time limit for exercise of powers of acquisition

10. The powers conferred by article 9 (temporary use of land for construction of works) cease at the end of the period of 5 years beginning with the day on which this Order comes into force, 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.

PART 4

MISCELLANEOUS AND GENERAL

Power to lop trees overhanging the authorised works

11.—(1) Network Rail may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to persons using the authorised works.

(2) In exercising the powers of paragraph (1), Network Rail must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

For protection of lead local flood authority

12. The provisions of Schedule 2 (protection for lead local flood authority) have effect.

Certification of plans, etc.

13. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference and the deposited plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference and deposited plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

(a) 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 SI 2009/1307.

(b) 1965 c.56 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).

Service of notices

14.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient, and subject to paragraphs (6) to (8), by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978^(a) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner” or, as the case may be, “occupier” of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission, the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document, the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

15. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

(a) 1978 c. 30.

Arbitration

16. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by the authority of the Secretary of State

17th November 2017

Natasha Kopala
Head of the Transport and Works Act Orders Unit
Department for Transport

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

Application of the 1965 Act

2. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act and the enactments relating to compensation for the compulsory purchase of land apply to a compulsory acquisition of new rights under article 8(1)—

- (a) with the modifications specified in paragraph 3, and
- (b) with such other modifications as may be necessary.

3.—(1) The modifications referred to in paragraph 2(a) are as follows.

(2) References in the 1965 Act to land are, in appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or
- (b) the land over which the right is, or is to be exercisable.

(3) For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“7. Measure of compensation in case of purchase of new right

In assessing the compensation to be paid by the acquiring authority under this Act regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

(5) Section 11 (powers of entry)(a) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, as well as the notice of entry required by subsection (1) of that section, it has power, exercisable in the same circumstances and subject to the same conditions, to enter for the purpose of exercising that right;

(a) 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.

and sections 11A(a) (powers of entry: further notices of entry), 11B(b) (counter-notice requiring possession to be taken on specified date), 12 (penalty for unauthorised entry)(c) and 13(d) (refusal to give possession to acquiring authority) of the 1965 Act are modified correspondingly.

(6) Section 20(e) (protection of interests of tenants at will etc.) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serves a notice to treat in respect of a right over the whole or part of a house, building or factory.

2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.

4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to —

- (a) withdraw the notice to treat,
- (b) accept the notice to treat, or
- (c) refer the counter-notice to the Upper Tribunal.

6. The acquiring authority must serve notice of its decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).

7. If the authority decides to refer the counter-notice to the Upper Tribunal it must do so within the decision period.

(a) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).
(b) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c. 22).
(c) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
(d) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 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).
(e) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

8. If the authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the acquiring authority serves notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right,
- (b) the use to be made of the right proposed to be acquired, and
- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the acquiring authority ought to be required to take.

13. If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the acquiring authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph, it must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

(9) For section 5A(5A) (relevant valuation date) of the 1961 Act, after “If” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 3(5) of Schedule 1 to the Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017),
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 8 of Schedule 1 to the Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017) to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection 3(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

(10) In section 5A(5B) (relevant valuation date) of the 1961 Act, for paragraphs (a) and (b) substitute—

- “(a) a right over land is the subject of a general vesting declaration,

- (b) by virtue of paragraph 11(2) or 16(2) of Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981, the declaration has effect as if it included an interest in the land, and
- (c) the vesting date for the right is different from the vesting date for the interest in the land.”.

(11) In the Land Compensation Act 1973, for section 44 (compensation for injurious affection) substitute—

“44. Compensation for injurious affection

(1) Where a right over land is acquired from any person for the purpose of works which are to be situated partly on that land and partly elsewhere, compensation for injurious affection of land retained by that person shall be assessed by reference to the whole of the works and not only the part situated on the land over which the right is exercisable.

(2) In this section, “compensation for injurious affection” means compensation for injurious affection under section 7 or 20 of the Compulsory Purchase Act 1965 as applied by paragraph 2 of Schedule 1 to the Network Rail (Closure of Abbots Ripton Level Crossing) Order 2017.”.

Compulsory Purchase (Vesting Declarations) Act 1981 and compensation enactments

4.—(1) The 1981 Act applies to a compulsory acquisition of a new right under article 8(1)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

(2) The enactments relating to compensation for the compulsory purchase of land also apply to a compulsory acquisition of a right under article 8(1).

5.—(1) The modifications referred to in paragraph 4(1)(a) are as follows.

(2) References in the 1981 Act to the 1965 Act are, in appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is, or is to be, exercisable.

(3) References in the 1981 Act to the 1965 Act are to be read as references to that Act as it applies to the compulsory acquisition of a right under article 8.

(4) Section 8(1) (vesting, and right to enter and take possession) of the 1981 Act is modified so as to secure—

- (a) that a general vesting declaration in respect of any right vests the right in the acquiring authority on the vesting date; and
- (b) that, as from the vesting date, the acquiring authority has power, exercisable in the same circumstances and subject to the same conditions, to enter land for the purpose of exercising that right as if the circumstances mentioned in section 8(1)(a) and (b) of the 1981 Act had arisen.

(5) Section 9(2) (right of entry under section 8(1) not exercisable in respect of land subject to certain tenancies unless notice has been served on occupiers of the land) of the 1981 Act is modified so as to require a notice served by the appropriate authority under that provision to refer to the authority’s intention to enter land specified in the notice in order to exercise the right.

(6) In section 10(1) (acquiring authority’s liability on vesting of the land) of the 1981 Act, the reference to the acquiring authority’s taking possession of the land under section 11(1) of the 1965 Act is to be read instead as a reference to the authority’s exercising the power to enter the land under that provision as modified by paragraph 3(5) of this Schedule.

(7) Schedule A1 to the 1981 Act (counter-notice requiring purchase of land not in general vesting declaration) has effect as if—

- (a) in paragraph 1(1), for “part only of” there were substituted “only the acquisition of a right over”;
- (b) paragraph 1(2) were omitted;
- (c) references to the land proposed to be acquired were (subject to paragraph (e) below) to the right proposed to be acquired;
- (d) references to the additional land were to the house, building or factory over which the right is proposed to be exercisable;
- (e) in paragraphs 14 and 15, references to the severance of land proposed to be acquired were to the acquisition of the right; and
- (f) in paragraph 15, after “in addition to” there were inserted “or in substitution for”.

SCHEDULE 2

Article 12

FOR PROTECTION OF LEAD LOCAL FLOOD AUTHORITY

- 1.** For the protection of the lead local flood authority (“the authority”) the following provisions will have effect, unless otherwise agreed in writing between Network Rail and the authority.
- 2.** Before carrying out any works under the powers conferred by this Order involving the construction, alteration or replacement of any culvert in land within the Order limits, Network Rail must provide to the authority proper and sufficient plans of such culvert for the approval of the authority and must not carry out the said works until the said plans have been approved in writing by the authority.
- 3.** The approval of plans provided under paragraph 2 must not be unreasonably withheld and if, within 56 days of such plans being supplied to the authority, the authority does not indicate in writing its disapproval and the grounds of its disapproval, it shall be deemed to have approved the plans as supplied.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers powers on Network Rail to stop up the Abbots Ripton level crossing and to construct works in connection with the closure of the level crossing, the extinguishment of the existing right of way and the creation of alternative public rights of way. The Order further confers powers on Network Rail for the temporary use of land in connection with the construction of the public rights of way provided to replace the crossing.

A copy of the deposited plans and the book of reference referred to in the Order may be inspected at the offices of the Company Secretary and Solicitor to Network Rail Infrastructure Limited at 1 Eversholt Street, London, NW1 2DN.

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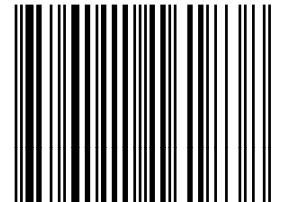
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