
STATUTORY INSTRUMENTS

2017 No. 1150

The Network Rail (Buxton Sidings Extension) Order 2017

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

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

- (a) so much of the land shown on the deposited plans within the limits of deviation as land to be acquired compulsorily and described in the book of reference 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 2 (acquisition of certain lands for ancillary works) (being land shown on the deposited 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 article 21 (power to acquire new rights) and article 23 (temporary use of land for construction of works).

Application of Part 1 of the 1965 Act

19.—(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 under that Act.

(2) Part 1 of the 1965 Act, as so applied, has effect with the following modifications.

(3) Omit section 4 (which provides a time limit for compulsory purchase of land).

(4) In section 4A(1)(2) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4”, substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the three year period mentioned in article 28 (time limit for exercise of powers of acquisition) of the Network Rail (Buxton Sidings Extension) Order 2017(3)”.

(1) 1981 c. 67.

(2) As inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(3) S.I. 2017/1150.

(5) In section 11(1B)(4) (powers of entry) in a case where the notice to treat relates only to the acquisition of an easement or other right over land, for “3 months” substitute “1 month”.

(6) In section 11A(5) (powers of entry: further notices of entry)—

(a) in subsection (1)(a), after “land” insert “under that provision”;

(b) in subsection (2), after “land” insert “under that provision”.

(7) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for “section 4 of this Act” substitute “article 28 (time limit for exercise of powers of acquisition) of the Network Rail (Buxton Sidings Extension) Order 2017(6)”.

(8) In Schedule 2A(7) (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 22(3) (power to acquire subsoil or airspace) of the Network Rail (Buxton Sidings Extension) Order 2017, which excludes the acquisition of subsoil or airspace only from this Schedule.”; and

(b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 16 (protective works to buildings), 23 (temporary use of land for construction of works) or 24 (temporary use of land for maintenance of works) of the Network Rail (Buxton Sidings Extension) Order 2017.”

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

20.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(8) applies as if this Order were a compulsory purchase order.

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

(3) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(4) Omit section 5A(9) (time limit for general vesting declaration).

(5) In section 5B(10) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the three year period mentioned in article 28 (time limit for exercise of powers of acquisition) of the Network Rail (Buxton Sidings Extension) Order 2017”.

(4) Subsection (1B) of section 11 was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016 (c. 22).

(5) As inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(6) S.I. 2017/1150.

(7) As inserted by paragraph 3 of Schedule 3 to the Housing and Planning Act 2016 (c. 22).

(8) 1981 c. 66.

(9) Inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

(10) As inserted by section 202(2) of the Housing and Planning Act 2016 (c. 22).

(6) In section 6(**11**) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 14A of the Transport and Works Act 1992”.

(7) In section 7(**12**) (constructive notice to treat) in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) In Schedule A1(**13**) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—

“(2) But see article 22(3) (power to acquire subsoil or airspace) of the Network Rail (Buxton Sidings Extension) Order 2017, which excludes the acquisition of subsoil or airspace only from this Schedule.”

(9) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 18 (power to acquire land) by article 19 (application of Part 1 of the 1965 Act).

Power to acquire new rights

21.—(1) Network Rail may acquire compulsorily such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 18 (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) In the case of the land specified in Schedule 8 (acquisition of new rights only) Network Rail’s powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (2) of that Schedule.

(3) Subject to Schedule 2A (counter-notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 7 (modification of compensation and compulsory purchase enactments for creation of new rights)) where Network Rail acquires a right over land under paragraph (1) or (2) Network Rail is not required to acquire a greater interest in that land.

(4) Schedule 7 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.

(5) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus for an undertaker Network Rail may, with the consent of the Secretary of State, transfer the power to acquire such rights to the undertaker in question.

(6) The exercise by an undertaker of any power in accordance with a transfer under paragraph (5) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by Network Rail.

(7) In paragraphs (5) and (6) “undertaker” means any person who is a statutory undertaker for the purposes of the 1990 Act.

Power to acquire subsoil or airspace only

22.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1)(a) or (b) or article 18 (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.

(11) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c. 22).

(12) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(13) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(2) Where Network Rail acquires any part of, or rights in, the subsoil of or the airspace over land under paragraph (1), Network Rail is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraph (1) in relation to subsoil or airspace only—

- (a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and
- (c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the Town and Country Planning Act 1990.

(4) Paragraphs (2) and (3) are to be disregarded where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.