

2021 No. 299

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

**The Network Rail (Ferryboat Lane Footbridge Reconstruction)
(Land Acquisition) Order 2021**

Made - - - - *11th March 2021*

Coming into force - - *1st April 2021*

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SCHEDULE 1 — LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

SCHEDULE 2 — LAND WHICH MAY BE USED FOR OVERSAILING AND ACCESS

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”).

Objections to that application have been withdrawn.

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 9th March 2021.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 3, 4, 7, 8, 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 (Ferryboat Lane Footbridge Reconstruction) (Land Acquisition) Order 2021 and comes into force on 1st April 2021.

Interpretation

2.—(1) In this Order—

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

“the 1965 Act” means the Compulsory Purchase Act 1965^(d);

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

“the 1990 Act” means the Town and Country Planning Act 1990^(f);

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

(a) S.I. 2006/1466, as amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755 S.I. 2014/469, S.I. 2015/377, S.I. 2015/627, S.I. 2015/1682, S.I. 2017/979, S.I. 2017/1070 and S.I. 2019/311.

(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.

(d) 1965 c. 56.

(e) 1981 c. 66.

(f) 1990 c. 8.

(g) 1991 c. 22.

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

“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;

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

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

“development” means the development authorised by a grant of planning permission under the 1990 Act, with the reference number 17/02551/FUL dated 6th April 2018 from Doncaster Metropolitan Borough Council, comprising the demolition of an existing footbridge and construction of a new footbridge, and any variation or replacement of that planning permission;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form,

and in this definition “electronic communications network” has the same meaning as in section 32(1) (meaning of electronic communications networks and services) of the Communications Act 2003(a);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587), whose registered office is at 1 Eversholt Street, London, NW1 2DN;

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

“statutory undertaker” means—

- (a) any person who is a statutory undertaker for the purposes of the 1990 Act; and
- (b) any public communications provider within the meaning of section 151(1) (interpretation of Chapter 1) of the Electronic Communications Act 2003; and

“the tribunal” means the Lands Chamber of the Upper Tribunal.

PART 2

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

3. Network Rail may acquire compulsorily so much of the land shown numbered 3 and 5 on the deposited plan and described in the book of reference as may be required for the purposes of the development and may use any land so acquired for those purposes, or for any other purposes that are ancillary to its railway undertaking as existing from time to time.

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(c) applies; and

(a) 2003 c. 21. Section 32(1) was amended by S.I. 2011/1210.

(b) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(c) 1981 c. 67.

(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), has effect with the following modifications.

(3) Omit section 4(a) (time limit for giving notice to treat).

(4) In section 4A(1)(b) (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 five year period mentioned in article 10 (time limit for exercise of powers of acquisition) of the Network Rail (Ferryboat Lane Footbridge Reconstruction) (Land Acquisition) Order 2021”.

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

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

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

(6) 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 10 (time limit for exercise of powers of acquisition) of the Network Rail (Ferryboat Lane Footbridge Reconstruction) (Land Acquisition) Order 2021”.

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

(a) omit paragraphs 1(2) and 14(2); 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 6 (temporary use of land in connection with the development) of the Network Rail (Ferryboat Lane Footbridge Reconstruction) (Land Acquisition) Order 2021.”.

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

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

(5) In section 5B(g) (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 five year period mentioned in article 10 (time limit for exercise of powers of acquisition) of the Network Rail (Ferryboat Lane Footbridge Reconstruction) (Land Acquisition) Order 2021”.

(a) Section 4 was inserted by section 182(1) of the Housing and Planning Act 2016 (c. 22).

(b) Section 4A(1) was inserted by section 202(1) of the Housing and Planning Act 2016.

(c) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(d) Section 2A was inserted by paragraph 3 of Schedule 17 to the Housing and Planning Act 2016.

(e) Section 5 was amended by paragraphs 4 and 6 of Schedule 15 to the Housing and Planning Act 2016.

(f) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(g) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016.

(6) In section 6(a) (notices after execution of declaration), 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(b) (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(c) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(9) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land under article 3 (power to acquire land) by article 4 (application of Part 1 of the 1965 Act).

Temporary possession or use of land

Temporary use of land in connection with the development

6.—(1) Subject to the provisions of article 11 (statutory undertakers, etc.), Network Rail may, in connection with the development, enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 1 (land of which temporary possession may be taken) for the purposes described in column (3) of that Schedule.

(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 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 implementation of the development or remove any part of the new public right of way provided in connection with the development.

(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 14 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(d) (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.

(a) Section 6 was amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraphs 4 and 7 of Schedule 15 to the Housing and Planning Act 2016.
(b) Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.
(c) Schedule A1 was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.
(d) Section 10 was amended by paragraph 13(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(9) Section 13(a) (refusal to give possession to the 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 this Order by virtue of article 4 (application of Part 1 of the 1965 Act).

Temporary use of land for oversailing and access

7.—(1) Network Rail may enter upon and use the land, and the airspace above the surface of the land, specified in Schedule 2 (land which may be used for oversailing and access)—

- (a) for the oversailing of cranes used by Network Rail in connection with the development; and
- (b) for the passage of persons or vehicles (with or without materials, plant and machinery) for the purpose of, or in connection with, the construction of the development.

(2) The power under paragraph (1) is exercisable on giving at least 7 days' notice to the owners and occupiers of the land or, where access is urgently required under paragraph (1)(b), such notice as is reasonably practicable.

(3) Paragraph (2) does not require notice to be given in relation to land used under paragraph (1)(b) where notice under that paragraph has already been given in relation to that land.

(4) Network Rail may not, without the agreement of the owners of the land, use airspace above the surface of the land as mentioned in paragraph (1)(a) after the end of 7 days beginning with the date of completion of the activities for which the crane has been used.

(5) Network Rail must pay compensation to the owners and occupiers of land to which paragraph (1) applies for any loss or damage arising from the exercise of the power conferred by that paragraph.

(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) Section 13 (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 compulsory acquisition of land under this Order by virtue of article 4 (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,

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.

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

Extinction of private rights of way

9.—(1) All private rights of way over the land shown numbered 5 on the deposited plan are extinguished on entry by Network Rail on that land in connection with the development.

(2) 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.

(3) Paragraph (1) has effect subject to—

(a) any notice given by Network Rail before—

(i) the completion of the acquisition of;

(ii) Network Rail’s appropriation of; or

(iii) Network Rail’s entry onto,

the land, that paragraph (1) does not apply to any right of way specified in the notice; and

(b) any agreement made (whether before or after any of the events mentioned in subparagraph (a) and before or after the coming into force of this Order) which makes reference to this article between Network Rail and the person in or to whom the right of way in question is vested or belongs.

(4) If any such agreement as is mentioned in paragraph (3)(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

10.—(1) After the end of the period of 5 years beginning on 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

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

(2) The powers conferred by article 6 (temporary use of land in connection with the development) 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.

PART 3

MISCELLANEOUS AND GENERAL

Statutory undertakers, etc.

11.—(1) Nothing in this Order affects the rights of statutory undertakers to maintain apparatus.

(2) In this article, “apparatus” has the same meaning as in Part 3 of the 1991 Act.

(a) Section 4 was amended by sections 184 and 185 of, and paragraph 2 of Schedule 18 to, the Housing and Planning Act 2016.

Certification of plans, etc.

12. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference and the deposited plan to the Secretary of State for certification that they are true copies of, respectively, the book of reference and deposited plan 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.

Service of notices

13.—(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 (5) 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.

(a) 1978 c. 30.

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

No double recovery

14. 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.

Arbitration

15. 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 authority of the Secretary of State for Transport

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

11th March 2021

SCHEDULE 1

Article 6

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plan</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
District of Doncaster Parish of Denaby	01, 06, 07	Worksite and access for construction.
	09	Creation of a temporary substitute for a public right of way.

SCHEDULE 2

Article 7

LAND WHICH MAY BE USED FOR OVERSAILING AND ACCESS

<i>Area</i>	<i>Number of land shown on the deposited plan</i>
District of Doncaster Parish of Denaby	2, 4, 8, 10

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers powers on Network Rail to acquire compulsorily land required in connection with the construction and maintenance of a new, ramped footbridge over the Penistone to Doncaster railway (Network Rail Engineer's Line Reference PED5) at Mexborough, referred to in this Order as the "development". The development has separately been authorised by a grant of planning permission under Part 3 of the Town and Country Planning Act 1990 (c. 8) from Doncaster Metropolitan Borough Council. The Order also confers powers on Network Rail to take temporary possession of land in connection with the development and to use land, and the airspace above the surface of land, temporarily to oversail cranes and for construction access.

Copies of the deposited plan and the book of reference referred to in the Order may be inspected at the offices of Network Rail Infrastructure Limited at Network Rail National Records Centre, Unit 5, Audax Road, Clifton Moor, York, YO30 4US.

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