
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 188

The Network Rail (Waverley Steps) Order 2010

PART 3

ACQUISITION AND POSSESSION OF LAND

Supplementary

Application of Lands Clauses Acts

23.—(1) The Lands Clauses Acts, except sections 15, 16, 18, 20 to 60, 62 to 66, 81, 116, 120 to 124, 130, 131, 135, 139, 142 and 143 of the 1845 Lands Act and the Lands Clauses Consolidation Acts Amendment Act 1860⁽¹⁾, are incorporated with this Order so far as applicable for the purposes of and not inconsistent with, or varied by, the provisions of this Order.

(2) In construing the Lands Clauses Acts as so incorporated—

- (a) this Order shall be deemed to be the special Act;
- (b) Network Rail shall be deemed to be the promoter of the undertaking or the company; and
- (c) the authorised works shall be deemed to be the works or the undertaking.

General vesting declarations

24.—(1) Subject to paragraph (3), section 195 of, and Schedule 15 to, the 1997 Act⁽²⁾ (which make provision for the vesting of land subject to compulsory purchase orders) apply to the compulsory acquisition of land under this Order as if this Order were a compulsory purchase order so as to enable Network Rail to vest by general vesting declaration any land authorised to be compulsorily acquired under this Order.

(2) The notice required by paragraph 2 of that Schedule (as so applied) shall be a notice—

- (a) that this Order has come into force;
- (b) containing the particulars specified in sub-paragraph (1) of that paragraph;
- (c) published and served in accordance with the requirements of paragraphs 6 to 6C of the First Schedule to the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947⁽³⁾ (publication and service of notice of confirmation of compulsory purchase orders); and
- (d) given at any time after this Order comes into force.

(3) In its application to this Order paragraph 15 of Schedule 15 to the 1997 Act shall have effect as if—

⁽¹⁾ 1860 c.106.

⁽²⁾ Schedule 15 was amended by the [Abolition of Feudal Tenure etc. \(Scotland\) Act 2000 \(asp 5\)](#), schedule 12, Part 1, paragraph 60 and schedule 13, Part 1.

⁽³⁾ 1947 c.42. Paragraphs 6A to 6C were inserted by the [Title Conditions \(Scotland\) Act 2003 \(asp 9\)](#), section 109, which was amended by [S.S.I. 2003/507](#).

- (a) in sub-paragraph (2)(a), for the words “the statutory maximum” there were substituted the words “level 3 on the standard scale”; and
- (b) sub-paragraph (2)(b) was omitted.

Acquisition of part only of certain properties

25.—(1) This article shall apply instead of section 90 of the 1845 Lands Act in any case where—

- (a) a notice to treat is served on a person (“the owner”) under that Act (as incorporated with this Order by article 23) in respect of part only of a building (“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 shall be required to sell the land subject to the notice to treat.

(4) If such a counter-notice is served within that period and Network Rail agrees to take the land subject to the counter-notice, the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice.

(5) If such a counter-notice is served within that period and Network Rail does not agree to take the land subject to the counter-notice, the question as to what land the owner shall be required to sell shall be referred to the tribunal.

(6) If on such a reference the tribunal determines that 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, the owner shall be required to sell the land subject to the notice to treat.

(7) If on such a reference the tribunal decides that only part 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, the notice to treat shall be deemed to be a notice to treat for that part.

(8) If on such a reference the tribunal determines 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 shall be 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.

(9) If the tribunal determines 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; and
- (b) the material detriment is not confined to the part of the land subject to the counter notice,

the notice to treat shall be deemed to be a notice to treat for the land subject to the counter-notice.

(10) A notice to treat shall have the effect it is deemed to have under paragraphs (4), (8) or (9) whether or not the additional land is land that Network Rail is authorised to acquire compulsorily under this Order.

(11) In any case where by virtue of a determination of 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.

(12) If Network Rail withdraws the notice to treat in accordance with paragraph (11), it shall 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.

(13) Where the owner is required under this article to sell only part of a building, Network Rail shall 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.

(14) Any notice or counter-notice served under this article shall be in writing.

Extinction of private rights

26.—(1) Subject to paragraph (2), all private rights (other than private rights of passage that are extinguished by article 8) over land within plots nos. 1 and 11 shall be extinguished—

- (a) in the case of land vested in Network Rail on the commencement of the works authorised by this Order; and
- (b) in the case of any land not so vested—
 - (i) as from the acquisition of the land by Network Rail, whether compulsorily or by agreement; or
 - (ii) on the entry on the land by Network Rail under article 27 (further powers of entry),

whichever is the sooner.

(2) Paragraph (1) shall have effect subject to any—

- (a) agreement made expressly in respect of this article (whether before or after this Order comes into force) between Network Rail and the person entitled to the private right;
- (b) determination made by Network Rail limiting the application of paragraph (1) to the extent specified in the determination.

(3) A determination made under paragraph (2) shall be made before the date on which the right in question would have been extinguished.

(4) Notice of such a determination must be given to the person entitled to the private right to which it relates as soon as practicable after the making of the determination.

(5) Any person who suffers loss by the extinguishment of any private right under this article shall be entitled to compensation.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of compensation, shall be determined under the 1963 Act.

Further powers of entry

27.—(1) At any time after notice to treat has been served in respect of—

- (a) any land; or
- (b) any servitudes or other rights in, on or over land,

which may be purchased compulsorily under this Order, Network Rail may enter on and take possession of or use the land or exercise the right.

(2) No land may be entered, and no right may be exercised under paragraph (1) unless at least 28 days' written notice has been given to the owner and the occupier of the land specifying the land, or part of the land, of which possession is to be taken or which is to be used, or specifying the nature of the right.

(3) Network Rail may exercise the powers of this article without complying with sections 83 to 89 of the 1845 Lands Act (payment of deposit prior to entry) before such exercise.

(4) Compensation for the land of which possession is taken under this article, or for the exercise of the right, together with interest on the compensation awarded, shall be payable as if sections 83 to 89 of the 1845 Lands Act had been complied with.

(5) Nothing in this article affects the operation of section 48 of the Land Compensation (Scotland) Act 1973⁽⁴⁾ (which entitles a landowner to require an advance payment of compensation when entry is taken).

Persons under disability may grant servitudes, etc.

28.—(1) Persons empowered by the Lands Clauses Acts to sell and convey or dispose of land may grant to Network Rail a servitude or other right required for any of the purposes of this Order in, over or affecting any such land.

(2) A person may not under this paragraph grant a servitude, right or privilege of water in which persons other than the grantor have an interest.

Time limit for exercise of powers of acquisition

29.—(1) The powers conferred by articles 14, 16 and 17 for the compulsory acquisition of land and of servitudes or other rights and the imposition of obligations shall cease after five years beginning on the date on which this Order comes into force.

(2) The powers conferred by articles 14, 15, 16 and 17 for the compulsory acquisition of such lands and of servitudes or other rights and the imposition of obligations shall, for the purposes of this article, be deemed to have been exercised in relation to any land, servitude or right or obligation, if before the expiry of five years beginning on the date on which this Order comes into force—

- (a) a notice to treat has been served;
- (b) a notice has been served under article 17(6)(a) in respect of that obligation; or
- (c) a declaration has been executed under paragraph 1 of Schedule 15 to the 1997 Act in respect of that land, servitude or right.

Time limit on validity of notices to treat

30. Section 78 of the Planning and Compensation Act 1991⁽⁵⁾ (which provides for notices to treat to be subject to a time limit) shall apply in relation to a notice to treat served under section 17 of the 1845 Lands Act (requirement for notice to treat) as incorporated with this Order.

(4) 1973 c.56. Section 48 is amended by the Planning and Compensation Act 1991 (c.34), section 73(1), Schedule 17, Part 2, paragraph 21 and Schedule 19, Part 4.

(5) 1991 c.34; section 78 was amended by the Planning (Consequential Provisions) (Scotland) Act 1997 (c.11), Schedule 2, paragraph 49(1).