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STATUTORY INSTRUMENTS

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**2012 No. 2679**

**The Chiltern Railways (Bicester to  
Oxford Improvements) Order 2012**

**PART 3**

**ACQUISITION AND POSSESSION OF LAND**

*Powers of acquisition*

**Power to acquire land**

**22.**—(1) Subject to article 31 (limitation of powers), the Company 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 29 (temporary use of land for construction of works).

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

**23.**—(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 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 Compulsory Purchase (Vesting Declarations) Act 1981**

**24.**—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(2) applies as if this Order were a compulsory purchase order.

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(1) 1981 c. 67.  
(2) 1981 c. 66.

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

(3) In section 3 (preliminary notices) for subsection (1) there is substituted—

“(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)” there is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is substituted—

“(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” there is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is omitted.

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

(8) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 22 (power to acquire land).

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

**25.**—(1) Subject to article 31 (limitation of powers), the Company may acquire compulsorily such easements or other rights over any land referred to in paragraph (1)(a) or (b) of article 22 (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) The Company may impose restrictive covenants affecting any land referred to in article 27(1) (cases where powers of acquisition limited to ground anchor rights) as may be required for the purposes, referred to in article 27(5).

(3) Subject to section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 10 (modification of compensation and compulsory purchase enactments for creation or imposition of new rights)) where the Company acquires a right over land or the benefit of a covenant over land under paragraph (1) or article 27(5) the Company is not required to acquire a greater interest in that land.

(4) Schedule 10 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 or the imposition of a restrictive covenant under article 27(5).

(5) Without limitation on the scope of paragraph (1), the rights which may be acquired under that paragraph include the acquisition of rights over—

- (a) the land numbered 11005, 11008, 11009, 12002, 12003, 12004, 12a003, 12b001 in the district of Cherwell on the deposited plans to provide a means of vehicular access for the benefit of the owners and occupiers of land affected by the closure of Manor Farm Crossing;
- (b) the land numbered 11008, 11009, 12002, 12003, 12004, 12a003 and 12b001 in the district of Cherwell on the deposited plans to provide a means of vehicular access for the benefit of the owners and occupiers of land affected by the closure of Holts Farm Crossing; and
- (c) the land numbered 16a001, 16a002, 16a003, 16a008, 16a009 and 17a001 in the district of Cherwell on the deposited plans to provide a means of vehicular access for the benefit of the owners and occupiers of land affected by the closure of Brookfurlong Farm Crossing.

### **Power to acquire airspace only**

**26.**—(1) Subject to article 31 (limitation of powers), the Company may acquire compulsorily so much of, or such rights in, the airspace over the land referred to in paragraph (1)(a) or (b) of article 22 (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.

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

### **Cases where powers of acquisition limited to ground anchor rights**

**27.**—(1) This article applies to the land numbered 26012, 26013, 26014, 26015 and 26016 in the City of Oxford shown on the deposited plans.

(2) The Company’s powers of compulsory acquisition under article 22 (power to acquire land) as respects the land referred to in paragraph (1) are limited to the acquisition of ground anchor rights in the subsoil of the land and the imposition of restrictive or other covenants under paragraph (5).

(3) Where the Company acquires ground anchor rights in the subsoil of land to which this article applies or imposes a covenant under paragraph (5) affecting the land, it is not required to acquire a greater interest in the land or any other interest in any part of it.

(4) In this article “ground anchor rights” means—

- (a) rights to insert ground anchors or soil nails into the subsoil, or to carry out other subsoil works, for the purposes of strengthening and stabilising Wolvercot Tunnel; and
- (b) rights to maintain the ground anchors, soil nails or other subsoil works referred to in sub-paragraph (a).

(5) In addition to acquiring ground anchor rights in the land referred to in paragraph (1), the Company may impose such restrictive or other covenants affecting the land as may be required for the purposes of maintaining or protecting the ground anchors, soil nails or other subsoil works referred to in paragraph (4)(a).

(6) References in this article to the subsoil of land are references to the subsoil lying more than 3 metres beneath the level of the surface of the land; and for this purpose “the level of the surface of the land” means—

- (a) in the case of any land on which a building is erected, the level of the surface of the ground adjoining the building; or
- (b) in any other case, ground surface level.

### **Rights under or over streets**

**28.**—(1) Subject to article 31 (limitation of powers), the Company may enter upon and appropriate so much of the subsoil of, or air-space over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to its railway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without the Company being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without the Company acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Paragraph (2) does not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

### *Temporary possession of land*

### **Temporary use of land for construction of works**

**29.**—(1) Subject to article 31 (limitation of powers), the Company may, in connection with the carrying out of the authorised works—

(a) enter upon and take temporary possession of—

- (i) the land specified in columns (1) and (2) of Schedule 11 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works (or any of those works) specified in column (4) of that Schedule; and
- (ii) any other land within the Order limits in respect of which no notice of entry has been served under section 11 of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981;

(b) remove any buildings and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land; and

(d) construct any permanent works specified in relation to that land in column (3) of Schedule 11 or any other permanent mitigation works.

(2) Not less than 14 days before entering upon and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land.

(3) The Company 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 11, 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 (4) of Schedule 11; or

(b) in the case of land referred to in paragraph (1)(a)(ii), 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 the Company 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 Compulsory Purchase (Vesting Declarations) Act 1981.

(4) Before giving up possession of land of which temporary possession has been taken under this article, the Company must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Company is not required to replace a building removed under this article.

(5) The Company 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.

(7) Without prejudice to article 56 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) 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 the land referred to in paragraph (1)(a)(i) except that the Company is not precluded from acquiring new rights over any part of that land under article 25 (power to acquire new rights).

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

(10) Section 13 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 23(1) (application of Part 1 of the 1965 Act).

### **Temporary use of land for maintenance of works**

**30.—**(1) Subject to paragraph (2) and article 31 (limitation of powers), at any time during the maintenance period relating to any of the scheduled works, the Company may—

- (a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise the Company to take temporary possession of—

- (a) any house or garden belonging to a house; or
- (b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land.

(4) The Company may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of works for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, the Company must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) The Company 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.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined under Part 1 of the 1961 Act.

(8) Without prejudice to article 56 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) 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 (6).

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

(10) Section 13 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 23(1) (application of Part 1 of the 1965 Act).

(11) In this article, "the maintenance period", in relation to a scheduled work, means the period of 5 years beginning with the date on which the work is opened for use.

### *Supplemental provisions*

#### **Limitation of powers**

**31.**—(1) This article applies to the land numbered 04036, 04037, 04038, 04039, 04041, 04042, 04043, 04044, 04045, 04046, 04047, 04048, 04049, 04050, 04052, 04053, 04055, 04056, 04a001, 04a002 and 18009 in the district of Cherwell shown on the deposited plans.

(2) The Company's powers under article 20 (protective works to buildings, roads or apparatus of a statutory undertaker), article 21 (power to survey and investigate land), article 22 (power to acquire land), article 25 (power to acquire new rights), article 26 (power to acquire airspace only), article 28 (rights under or over streets), article 29 (temporary use of land for construction of works) and article 30 (temporary use of land for maintenance of works) do not apply in respect of the land referred to in paragraph (1).

### *Compensation*

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

**32.**—(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.

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

**33.**—(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 25 (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 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**

**34.**—(1) This article applies instead of section 8(1) of the 1965 Act (as applied by article 23 (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 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 the Company a counter-notice objecting to the sale of the land subject to the notice to treat which states 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 the Company 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 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 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 the Company is authorised to acquire compulsorily under this Order.

(8) If the Company 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 the Company 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, the Company 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, the Company 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**

**35.**—(1) Subject to paragraph (6), 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 the Company, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the Company under section 11(1) of the 1965 Act, whichever is the sooner.

(2) Subject to paragraph (6), in respect of land owned by the Company or Network Rail and required for the purposes of this Order, all private rights of way are extinguished on the appropriation of the land for any of those purposes by the Company or Network Rail.

(3) Subject to paragraph (6), all private rights of way over land of which the Company takes temporary possession under this Order are suspended and unenforceable for as long as the Company remains in lawful possession of the land.



(4) 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.

(5) This article is subject to paragraph 6 of Schedule 14 (for the protection of specified undertakers) and does not apply in relation to any right of way to which section 271 or 272 of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 13 (provisions relating to statutory undertakers etc.) applies.

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

- (a) any notice given by the Company before the completion of the acquisition of the land, the Company's appropriation of it, the Company's entry onto it or the Company'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 made (whether before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of this Order) which makes reference to this article between the Company and the person in or to whom the right of way in question is vested or belongs.

(7) Any such agreement as is mentioned in sub-paragraph (6)(b) which 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, 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**

**36.**—(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 23 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981(3), as applied by article 24 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 29 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents the Company 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.