
STATUTORY INSTRUMENTS

2018 No. 446

The Network Rail (Hope Valley Capacity) Order 2018

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

17.—(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 20 (power to acquire new rights), article 21 (cases where powers of acquisition limited to ground anchor rights) and article 24 (temporary use of land for construction of works).

Application of Part 1 of the 1965 Act

18.—(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 1981 Act 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 with the following modifications.

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

(4) In section 4A(1)(1) (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 29 (time limit for exercise of powers of acquisition) of the Network Rail (Hope Valley Capacity) Order 2018(2)”.

(1) As inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
(2) S.I. 2018/446.

(5) In section 11(1B)(3) (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(4) (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 29 (time limit for exercise of powers of acquisition) of the Network Rail (Hope Valley Capacity) Order 2018(5)”.

(8) In Schedule 2A(6) (counter-notice requiring purchase of land not in notice to treat)—

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

“(2) But see articles 21(4) (cases where powers of acquisition limited to ground anchor rights) and 22(3) (power to acquire subsoil or airspace only) of the Network Rail (Hope Valley Capacity) Order 2018, which exclude acquisition with respect to ground anchor rights only and 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 15 (protective works to buildings), 24 (temporary use of land for construction of works) or 25 (temporary use of land for maintenance of works) of the Network Rail (Hope Valley Capacity) Order 2018.”

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

19.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(7) 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(8) (time limit for general vesting declaration).

(5) In section 5B(9) (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 29 (time limit for exercise of powers of acquisition) of the Network Rail (Hope Valley Capacity) Order 2018”.

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

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

(5) S.I. 2018/446.

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

(7) 1981 c. 66.

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

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

(6) In section 6(10) (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(11) (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(12) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—

“(2) But see articles 21(4) (cases where powers of acquisition limited to ground anchor rights) and 22(3) (power to acquire subsoil or airspace only) of the Network Rail (Hope Valley Capacity) Order 2018, which exclude acquisition with respect to ground anchor rights only and the acquisition of subsoil or airspace only from this Schedule.”; and

(9) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 17 (power to acquire land).

Power to acquire new rights

20.—(1) Network Rail may acquire compulsorily such easements or other rights over any land referred to in paragraphs 1(a) or (b) of article 17 (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) Network Rail may impose restrictive covenants affecting any land referred to in article 21(1) (cases where powers of acquisition limited to ground anchor rights) as may be required for the purposes referred to in article 21(6).

(3) In the case of the land specified in Schedule 7 (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 (3) of that Schedule.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 6 (modification of compensation and compulsory purchase enactments for creation or imposition of new rights)) where Network Rail acquires a right over land or the benefit of a restrictive covenant under paragraph (1), paragraph (3), article 21(2) or article 21(6) Network Rail is not required to acquire a greater interest in that land.

(5) Schedule 6 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 or article 21(2) of a right over land by the creation of a new right or the imposition of a restrictive covenant under article 21(6).

(6) In any case where the acquisition of new rights under paragraph (1) is required for the purpose of diverting, replacing or protecting apparatus of 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.

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

(8) In paragraphs (6) and (7) “undertaker” means—

(a) any person who is a statutory undertaker for the purposes of the 1990 Act;

(10) 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).

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

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

- (b) any public communications provider within the meaning of section 15(1) of the 2003 Act; and
- (c) the owners of the oil pipeline situated within the plots numbered 3, 3a, 3b, 12, 13, 14, 14a, 15, 15a, 16, 17, 17a, 18a, 20, 20a, 21, 21a, 22, 22a, 23, 23a, and 23b in the County of Derbyshire, Peak District National Park.

Cases where powers of acquisition limited to ground anchor rights

21.—(1) This article applies to—

- (a) the plots numbered 5, 7, 9 and 12 in the County of Derbyshire, Peak District National Park; and
- (b) the plots numbered 42, 43, 44 and 45 in the City of Sheffield.

(2) Network Rail’s powers of compulsory acquisition under article 17 (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 (6).

(3) Where Network Rail acquires ground anchor rights in the subsoil of land to which this article applies or imposes a covenant under paragraph (6) 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) The following do not apply in connection with the exercise of the power under paragraph (2) in relation to ground anchor rights or under paragraph (6) in relation to the imposition of restrictive or other covenants—

- (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 1990 Act.

(5) 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 purpose of strengthening and stabilising Work No. 2, Work No. 3 and Work No. 6; and
- (b) rights to maintain the ground anchors, soil nails or other subsoil works referred to in sub-paragraph (a).

(6) In addition to acquiring ground anchor rights over the land referred to in paragraph (1), Network Rail 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 (5)(a).

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) of article 17 (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 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 1990 Act.

(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.

Rights under or over streets

23.—(1) Network Rail may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the authorised works and may use the subsoil or airspace 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 Network Rail 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 Network Rail 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 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.