
STATUTORY INSTRUMENTS

2018 No. 446

The Network Rail (Hope Valley Capacity) Order 2018

PART 3

ACQUISITION AND POSSESSION OF LAND

Temporary Possession of Land

Temporary use of land for construction of works

24.—(1) Network Rail 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 8 (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(1) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(2) (execution of declaration) 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;
- (d) temporarily occupy and use airspace for the purposes of the operation of a crane in connection with the construction of the authorised works; and
- (e) construct any permanent works specified in relation to that land in column (3) of Schedule 8 or any other permanent mitigation works.

(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—

(1) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(2) Section 4 was amended by section 184 and 185 of, and paragraph 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016 (c. 22).

- (a) in the case of land specified in columns (1) and (2) of Schedule 8, 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 8; 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 Network Rail 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, 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—
- (a) replace a building removed under this article; or
 - (b) restore the land on which any works have been constructed under paragraph 1(e).
- (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 the compensation, is to be determined under Part 1 of the 1961 Act.
- (7) Without affecting article 42 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(3) (further provisions 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) 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 Network Rail is not precluded over any part of that land, from—
- (a) acquiring new rights under article 20 (power to acquire new rights); or
 - (b) acquiring ground anchor rights or imposing restrictive covenants under article 21 (cases where powers of acquisition limited to ground anchor rights).
- (9) Where Network Rail takes possession of land under this article, Network Rail is not required to acquire the land or any interest in it.
- (10) Section 13(4) (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 acquisition of land under this Order by virtue of article 18(1) (application of Part 1 of the 1965 Act).

Temporary use of land for maintenance of works

- 25.**—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, Network Rail 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; 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.

(3) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(4) Section 13 was amended by sections 62(3) and 139 of, paragraphs 27 and 28 of Schedule 13, and part 3 of Schedule 23, to the Tribunals Courts and Enforcement Act 2007 (c.15).

(2) Paragraph (1) does not authorise Network Rail 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 Network Rail must serve notice of the intended entry on the owners and occupiers of the land.

(4) Network Rail 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, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) 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.

(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 affecting article 42 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provisions 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 (6).

(9) Where Network Rail takes possession of land under this article, Network Rail 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 under this article to the same extent as it applies to the acquisition of land under this Order by virtue of article 18(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.