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STATUTORY INSTRUMENTS

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**2018 No. 571**

**The Network Rail (Kings Mill No. 1 Level Crossing)  
(Land Acquisition and Closure) Order 2018**

**PART 3**

**ACQUISITION AND POSSESSION OF LAND**

*Powers of acquisition*

**Power to acquire land**

5.—(1) Network Rail may acquire compulsorily so much of the land shown on the deposited plan and described in the book of reference as may be required for the purposes of the development or the creation of the new public right of way 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.

(2) This article is subject to paragraph (1) of article 8 (power to acquire new rights), paragraph (8) of article 9 (temporary use of land for construction of works) and paragraph (7) of article 10 (cranes).

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

6.—(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) In its application by virtue of paragraph (1), the 1965 Act has effect subject to the following modifications.

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

(4) In section 4A(1)(2) (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 14 (time limit for exercise of powers of acquisition) of the Network Rail (Kings Mill No. 1 Level Crossing Land Acquisition and Closure) Order 2018(3)”.

(5) In section 11(1B)(4) (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”.

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(1) 1981 c. 67.

(2) As inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(3) S.I. 2018/571.

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

- (6) In section 11A(5) (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”.

(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 14 (time limit for exercise of powers of acquisition) of the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018”.

- (8) In Schedule 2A (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 9 (temporary use of land in connection with the development) of the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018.”

#### **Application of the 1981 Act**

- 7.—(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 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.
- (4) Omit section 5A(6) (time limit for general vesting declaration).
- (5) In section 5B(7) (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 14 (time limit for exercise of powers of acquisition) of the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018”.
- (6) In section 6(8) (notices after execution of general vesting declaration), for “section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981” substitute “section 14A(9) of the Transport and Works Act 1992”.
- (7) In section 7(10) (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(11) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

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

(6) As inserted by section 182(2) of the Housing and Planning Act 2016 (c. 22).

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

(8) 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).

(9) As inserted by S.I. 2017/16.

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

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

(9) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land by article 6 (application of Part 1 of the 1965 Act).

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

8.—(1) In the case of the land specified in columns (1) and (2) of Schedule 1 (land in which only new rights etc., may be acquired) Network Rail's powers of compulsory acquisition under article 5 (power to acquire land) are limited to the acquisition of such new rights as may be required for the purposes specified in relation to that land in column (3) of that Schedule.

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

(3) Schedule 2 has effect for the purpose of modifying the enactments relating to compensation, and the provisions of the 1965 Act, in its application in relation to the compulsory acquisition under this article of a right over land by the creation of a new right.

### *Temporary possession or use of land*

### **Temporary use of land in connection with the development**

9.—(1) — Network Rail may, in connection with the development and the creation of the new public right of way, enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 3 (land of which temporary possession may be taken) for the purposes described in column (3).

(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 on the land.

(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 18 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(12) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of 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) except that Network Rail is not precluded from—

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(12) 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.

- (a) acquiring new rights over any part of that land under article 8 (power to acquire new rights); or
- (b) the temporary use of airspace under article 10 (cranes).

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

(10) Section 13(13) (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article.

## Cranes

**10.**—(1) Network Rail may enter upon and use airspace above the surface of land specified in paragraph (8) for the oversailing of cranes used by Network Rail in connection with the development or the creation of the new public right of way.

(2) The power under paragraph (1) is exercisable on giving at least 7 days' notice to the owners and occupiers of the land.

(3) 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) after the end of 7 days beginning with the date of completion of the activities for which the crane has been used.

(4) Network Rail must pay compensation to the owners and occupiers of land above which the power under paragraph (1) is exercised for any loss which they may suffer by reason of the exercise of that power.

(5) Any dispute as to a person's entitlement to compensation under paragraph (4), or as to the amount of compensation, must be determined under and in accordance with Part 1 of the 1961 Act.

(6) Nothing in this article affects any liability to pay compensation under section 10(2) of the 1965 Act (as applied by article 6(1) to the acquisition of land under article 5(1)) or under any other enactment, otherwise than for loss for which compensation is payable under paragraph (4).

(7) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1) except that Network Rail is not precluded from—

- (a) acquiring new rights over any part of that land under article 8 (power to acquire new rights); or
- (b) the temporary use of land under article 9 (temporary use of land in connection with the development).

(8) This is the land referred to in paragraph (1)—

| <i>Area</i>                         | <i>Number of land shown on the deposited plan</i> |
|-------------------------------------|---------------------------------------------------|
| County of Nottinghamshire           | 7, 11 to 17 and 22                                |
| District of Ashfield                |                                                   |
| County of Nottinghamshire           | 1 to 4 and 10                                     |
| Districts of Mansfield and Ashfield |                                                   |

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

## *Compensation*

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

**11.** 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.

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

**12.—**(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 development.

(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 8 (power to acquire new rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in value of the land over which the new rights are acquired; and
- (b) any increase in the 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 development.

(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*

### **Extinction or suspension of private rights of way**

**13.—**(1) 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 Network Rail, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by Network Rail under section 11(1)(**14**) (powers of entry) of the 1965 Act,

whichever is the sooner.

(2) Subject to the provisions of this article, all private rights of way over land subject to the compulsory acquisition of rights under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

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**(14)** 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.

- (a) as from the date of the acquisition of the right by Network Rail, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act, whichever is the sooner.

(3) Subject to paragraph (6), all private rights of way over land of which Network Rail takes temporary possession under this Order are suspended and unenforceable for as long as Network Rail 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) Paragraphs (1), (2), (3) and (4) have effect subject to—

(a) any notice given by Network Rail before—

- (i) completion of the acquisition of;
- (ii) Network Rail's appropriation of;
- (iii) Network Rail's entry onto; or
- (iv) Network Rail's taking temporary possession of,

the land, that any or all of those paragraphs do not apply to any right of way specified in the notice; and

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

(6) If any such agreement as is mentioned in paragraph (5)(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.

(7) This article 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 4 (provisions relating to statutory undertakers etc.) to this Order applies.

#### **Time limit for exercise of powers of acquisition**

**14.**—(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 6 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 7 (application of the 1981 Act).

(2) The powers conferred by article 9 (temporary use of land in connection with the development) cease at the end of the period of 5 years beginning with the day on which this Order comes into force, 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.