
STATUTORY INSTRUMENTS

2022 No. 872

**The Network Rail (Oxford Station Phase 2
Improvements (Land Only)) (No. 2) Order 2022**

PART 1

PRELIMINARY

Citation, commencement and revocation

1.—(1) This Order may be cited as the Network Rail (Oxford Station Phase 2 Improvements (Land Only)) (No. 2) Order 2022 and comes into force on 2nd August 2022.

(2) The Network Rail (Oxford Station Phase 2 Improvements (Land Only)) Order 2022(1) is revoked.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(2);

“the 1965 Act” means the Compulsory Purchase Act 1965(3);

“the 1980 Act” means the Highways Act 1980(4);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(5);

“the 1990 Act” means the Town and Country Planning Act 1990(6);

“the 1991 Act” means the New Roads and Street Works Act 1991(7);

“the 2003 Act” means the Communications Act 2003(8);

“address” includes any number or address used for the purposes of electronic transmission;

“authorised works” means the works authorised by the prior approval and any associated or similar works authorised by the Town and Country Planning (General Permitted Development) (England) Order 2015(9);

“book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“building” includes any structure or erection or any part of a building, structure or erection;

“carriageway” has the same meaning as in the 1980 Act;

(1) [S.I. 2022/871](#).
(2) [1961 c. 33](#).
(3) [1965 c. 56](#).
(4) [1980 c. 66](#).
(5) [1981 c. 66](#).
(6) [1990 c. 8](#).
(7) [1991 c. 22](#).
(8) [2003 c. 21](#).
(9) [S.I. 2015/596](#).

“deposited plans” means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

and in this definition “electronic communications network” has the same meaning as in section 32(1)(10) (meaning of electronic communications networks and services) of the 2003 Act;

“footway” has the same meaning as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” is to be construed accordingly;

“Network Rail” means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN;

“the Order limits” means the limits of land to be acquired or used which are shown on the deposited plans and described in the book of reference;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(11);

“prior approval” means the prior approval issued by Oxford City Council and dated 26 November 2021 (reference 21/02007/PA18) including any variation or replacement of such prior approval;

“street” has the meaning given in section 48(1) (streets, street works and undertakers) of the 1991 Act and “street” includes part of a street;

“street authority” in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal; and

“the undertaking” means the railway undertaking of Network Rail as from time to time existing.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) All measurements stated in any description of land in the book of reference are approximate.

(4) References in this Order to numbered plots are references to plot numbers shown on the deposited plans.

(10) Section 32(1) was amended by S.I. 2011/1210.

(11) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

PART 2

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

3.—(1) Network Rail may acquire compulsorily so much of the land shown on the deposited plans and described in the book of reference as may be required for the purposes of the authorised works or their maintenance and may use any land so acquired for those purposes.

(2) This article is subject to article 6 (power to acquire new rights) and article 8 (temporary possession of land).

Application of Part 1 of the 1965 Act

4.—(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(12) 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)(13) (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 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 13 (time limit for exercise of powers of acquisition) of the Network Rail (Oxford Station Phase 2 Improvements (Land Only)) (No. 2) Order 2022”.

(5) In section 11(1B)(14) (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(15) (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) (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 (Oxford Station Phase 2 Improvements (Land Only)) (No. 2) Order 2022”.

(8) In Schedule 2A(16) (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—

(12) 1981 c. 67.

(13) Section 4A was inserted by section 202(1) of Housing and Planning Act 2016 (c. 22).

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

(15) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

(16) Schedule 2A was inserted by section 199(1) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016.

“PART 4 INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 8 (temporary possession of land) of the Network Rail (Oxford Station Phase 2 Improvements (Land Only)) (No. 2) Order 2022.”.

Application of the 1981 Act

- 5.—**(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(**17**) (time limit for general vesting declaration).
- (5) In section 5B(1)(**18**) (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 13 (time limit for exercise of powers of acquisition) of the Network Rail (Oxford Station Phase 2 Improvements (Land Only)) (No. 2) Order 2022”.
- (6) In section 6(**19**) (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(**20**) (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(**21**) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).
- (9) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land under article 3 (power to acquire land) by article 4 (application of Part 1 of the 1965 Act).

Power to acquire new rights

- 6.—**(1) Subject to paragraph (2), Network Rail may acquire compulsorily such easements or other rights over any land which it is authorised to acquire under article 3 (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) Subject to Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 1 (modification of compensation and compulsory purchase 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.

(17) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(18) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016.

(19) Section 6 was 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.

(20) Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.

(21) Schedule A1 was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

(3) Schedule 1 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.

Power to acquire subsoil or airspace only

7.—(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 article 3(1) (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 the land under paragraph (1), Network Rail is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 4 (application of Part 1 of the 1965 Act)) or Schedule A1 to the 1981 Act (as modified by article 5 (application of the 1981 Act)) from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Temporary Possession of Land

Temporary possession of land

8.—(1) Network Rail may, in connection with the carrying out of the authorised works, enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 2 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule and may, in connection with the carrying out of the authorised works—

- (a) remove any buildings, materials (including any waste material) and vegetation from that land;
- (b) construct temporary works (including the provision of means of access) and buildings on that land;
- (c) temporarily occupy and use airspace for the purposes of the operation of a crane in connection with the construction of the authorised works; and
- (d) construct or undertake any works specified in relation to that land in column (2) of Schedule 2, or any works of mitigation.

(2) Subject to paragraph (11), Network Rail may, in connection with the carrying out of the authorised works, enter upon and take possession of any other land within the Order limits in respect of which no notice of entry has been served under section 11(22) (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(23) (execution of declaration) of the 1981 Act and may, in connection with the carrying out of the authorised works—

- (a) remove any buildings, materials (including any waste material) and vegetation from that land;

(22) Section 11 was amended by section 34(1) of, and paragraph 14(3) of 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 and S.I. 2009/1307.

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

- (b) construct temporary works (including the provision of means of access) and buildings on that land; and
 - (c) construct any permanent works comprising part of the authorised works.
- (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 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 paragraph (1) 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 (3) of Schedule 2; or
 - (b) in the case of land referred to in paragraph (2), 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(1) of the 1965 Act or made a declaration under section 4 of the 1981 Act.
- (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, but Network Rail is not required to—
- (a) replace a building or materials removed under this article; or
 - (b) restore the land on which any works have been constructed under paragraph (2)(c).
- (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, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.
- (8) Without affecting article 20 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(24) (further provision 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(25) (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 compulsory acquisition of land under this Order by virtue of article 4 (application of Part 1 of the 1965 Act).
- (11) Paragraph (2) does not authorise Network Rail to take temporary possession of any land which it is not authorised to acquire under article 3 (power to acquire land).

Temporary use of land for maintenance works

9.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised works, Network Rail may—

(24) 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.

(25) 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).

- (a) enter upon and take temporary possession of any Order land 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.
- (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 as if it were a dispute under Part 1 of the 1961 Act.
- (8) Without affecting article 20 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision 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, it is not required to acquire the land or any interest in it.
- (10) Section 13 (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 compulsory acquisition of land under this Order by virtue of article 4 (application of Part 1 of the 1965 Act).
- (11) In this article "the maintenance period" in relation to an authorised work means the period of 5 years beginning with the date on which the work is opened for use.

Compensation

Disregard of certain interests and improvements

10.—(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 the 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

11.—(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 6 (power to acquire new rights), the tribunal is to 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 acquired; 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

Extinction or suspension of private rights of way

12.—(1) Subject to the provisions of this article, 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) (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 owned by Network Rail which, being within the Order limits, is required for the purposes of the authorised works, are extinguished on the appropriation of the land for any of those purposes by Network Rail.

(3) 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—

- (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.

(4) Subject to the provisions of this article, 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.

(5) 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, as if it were a dispute under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right of way to which sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272(26) (extinguishment of rights of electronic communications code network operators: preliminary notices) of the 1990 Act or paragraph 1 of Schedule 4 (provisions relating to statutory undertakers, etc.) to this Order applies.

(7) Paragraphs (1) to (4) have effect subject to—

- (a) any notice given by Network Rail before the completion of the acquisition of the land, Network Rail's appropriation of it, Network Rail's entry onto it or Network Rail'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) 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.

(8) In respect of Plots 6b and 6c (as shown on the deposited plans)—

- (a) notwithstanding paragraph (1), no private rights of way over Plots 6b or 6c are extinguished on the occurrence of the events in paragraphs (1)(a) or (b);
- (b) subject to Network Rail providing or there being available an alternative or diverted route Network Rail may suspend any private rights of way over Plots 6b and 6c for any purpose in connection with the carrying out of the authorised works;
- (c) not less than 28 days before suspending any private rights of way pursuant to sub-paragraph (b), Network Rail must serve notice of the suspension on persons in or to whom the right of way in question is vested or belongs and such notice must specify the period of suspension;
- (d) any right suspended pursuant to sub-paragraph (b) is unenforceable for the period specified in the notice served under sub-paragraph (c).

(9) Notwithstanding paragraph (1), no private rights of way over Plot 17b (as shown on the deposited plans) are extinguished in accordance with paragraph (1) until the new junction has been constructed between Cripsey Road and Roger Dudman Way pursuant to the prior approval and is available for use by the public.

Time limit for exercise of powers of acquisition

13.—(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 4 (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 5 (application of the 1981 Act).

(2) The powers conferred by article 8 (temporary possession of land) cease at the end of the period referred to in paragraph (1), 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.

PART 3

MISCELLANEOUS AND GENERAL

Level crossing to be stopped up

14.—(1) Subject to the provisions of this article, the level crossing listed in column (2) of Schedule 3 (closure of level crossing) is stopped up and discontinued.

(2) Upon the stopping up and discontinuance of the level crossing referred to in paragraph (1) all rights of way (whether public or private) over that crossing are extinguished.

(3) Any person who suffers loss by reason of the extinguishment of any private right of way under this article is entitled to compensation to be determined, in the case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

Use of private roads for construction

15.—(1) Network Rail may use any private road within the Order limits for the passage of persons or vehicles (with or without materials, plant and machinery) for the purposes of, or in connection with, the construction of the authorised works.

(2) Network Rail must compensate the person liable for the repair of a road to which paragraph (1) applies for any loss or damage which that person may suffer by reason of the exercise of the power conferred by paragraph (1).

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of such compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

Power to survey and investigate land

16.—(1) Network Rail may for the purposes of this Order—

- (a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as Network Rail thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1), unless at least 7 days' notice has been served on every owner and occupier of the land.

(3) Notice given in accordance with paragraph (2) must include—

- (a) a statement of the recipient's rights under paragraph (14); and
- (b) a copy of any warrant issued under paragraph (7).

(4) If Network Rail proposes to do any of the following, the notice must include details of what is proposed—

- (a) searching, boring or excavating;
- (b) leaving apparatus on the land;

- (c) taking samples;
 - (d) an aerial survey.
- (5) If Network Rail obtains a warrant after giving notice in accordance with paragraph (2) it must give a copy of the warrant to all those to whom it gave that notice.
- (6) Any person entering land under this article on behalf of Network Rail—
- (a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph (7);
 - (b) may not use force unless a justice of the peace has issued a warrant under paragraph (7) authorising the person to do so;
 - (c) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes;
 - (d) may only enter and survey land at a reasonable time; and
 - (e) must, if the land is unoccupied or the occupier is absent from the land when the person enters it, leave it as secure against trespassers as when the person entered it.
- (7) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—
- (a) that another person has prevented or is likely to prevent the exercise of that power; and
 - (b) that it is reasonable to use force in the exercise of that power.
- (8) The force that may be authorised by a warrant is limited to that which is reasonably necessary.
- (9) A warrant authorising the person to use force must specify the number of occasions on which Network Rail can rely on the warrant when entering and surveying or investigating land.
- (10) The number specified for the purposes of paragraph (9) must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or investigation are required.
- (11) Any evidence in proceedings for a warrant under this article must be given on oath.
- (12) No trial holes are to be made under this article—
- (a) in a carriageway or footway without the consent of the highway authority; or
 - (b) in a private street without the consent of the street authority,
- but such consent must not be unreasonably withheld.
- (13) If either a highway authority or a street authority which receives an application for consent fails to notify Network Rail of its decision within 28 days of receiving the application for consent—
- (a) under paragraph (12)(a) in the case of a highway authority; or
 - (b) under paragraph (12)(b) in the case of a street authority,
- that authority is deemed to have granted consent.
- (14) Network Rail must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.
- (15) Nothing in this article overrides the requirement to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(27).

Statutory undertakers, etc.

17. Schedule 4 (provisions relating to statutory undertakers, etc.) has effect.

Certification of plans, etc.

18. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference and the deposited plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference and deposited plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

19.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(28) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given his consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

No double recovery

20. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

21. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Protective provisions

22. Schedule 5 (protective provisions) has effect.

Disapplication of legislative provisions

23. The provisions of the Neighbourhood Planning Act 2017⁽²⁹⁾ are dis-applied insofar as they related to the temporary occupation of land under article 8 (temporary possession of land).

Signed by authority of the Secretary of State for Transport

Natasha Kopala
Head of the Transport and Works Act Orders
Unit
Department for Transport

25th July 2022