
WELSH STATUTORY INSTRUMENTS

2013 No. 767

The Network Rail (Pont Briwet) (Land Acquisition) Order 2013

PART 2

ACQUISITION AND POSSESSION OF LAND

Supplementary

Acquisition of part of certain properties

12.—(1) This article applies instead of section 8(1) of the 1965 Act (as applied by article (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 by article 4) in respect of land consisting of 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 Network Rail 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 is required to 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 is required to sell only the land subject to the notice to treat is, unless Network Rail 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 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 is required to 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 the 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 Network Rail is authorised to acquire compulsorily under this Order.

(8) If Network Rail 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 Network Rail 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, Network Rail 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, Network Rail 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.

Common Land

13.—(1) All rights of common over the land shown numbered 9 and 10 on the land plan are extinguished and all rights of public access over that land cease as from the date of its acquisition by Network Rail.

(2) All rights of common and all public rights of access over common 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.

(3) Any person who suffers loss by the extinguishment or suspension of any right of common under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

Extinction or suspension of private rights

14.—(1) Subject to the provisions of this article, all private rights over the land shown numbered 1, 1a, 1b, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 12 on the land plan 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) of the 1965 Act,

whichever is the sooner.

(2) Subject to the provisions of this article, all private rights over the land referred to in paragraph (1) or listed in Schedule 2 (land in which only new rights may be acquired) are extinguished in so far as their continuance would be inconsistent with the exercise of rights authorised to be acquired under this Order—

- (a) as from the date of the acquisition 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 in pursuance of the right,

whichever is the earliest.

(3) Subject to the provisions of this article, all private rights over any Order land which is owned by Network Rail (other than land specified in Schedule 2 or Schedule 3 (land of which temporary possession may be taken)) and is required for the purposes of this Order are extinguished on the appropriation of the land for any of those purposes by Network Rail.

(4) Subject to the provisions of this article, all private rights 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 under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(6) 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.) applies.

(7) Paragraphs (1), (2), (3) and (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 does not apply to any right of way specified in the notice; and
- (b) any agreement which makes reference to this article (whether made 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.

(8) If any such agreement as is mentioned in paragraph (7)(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.

(9) Reference in this article to private rights over land does not include rights of common but includes reference to any trusts or incidents to which the land is subject.

Time limit for exercise of powers of acquisition

15.—(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 (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⁽¹⁾ as applied by article (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(1) 1981 c. 66.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(2) The powers conferred by article (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), but 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.