
STATUTORY INSTRUMENTS

2018 No. 937

**The Network Rail (Felixstowe Branch Line
Improvements – Level Crossings Closure) Order 2018**

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018 and comes into force on 26th September 2018.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1980 Act” means the Highways Act 1980(3);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);

“the 1990 Act” means the Town and Country Planning Act 1990(5);

“the 1991 Act” means the New Roads and Street Works Act 1991(6);

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

“authorised works” means the scheduled work and any other works authorised by this Order;

“the 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;

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

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

“definitive map and statement” has the meaning given by section 53(1) (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981(7);

“the deposited plans” means the plans entitled “Works and Land and Public Rights of Way Plans” certified by the Secretary of State as the deposited plans for the purposes of this Order;

“electronic transmission” means a communication transmitted—

(1) 1961 c. 33.

(2) 1965 c. 56.

(3) 1980 c. 66.

(4) 1981 c. 66.

(5) 1990 c. 8.

(6) 1991 c. 22.

(7) 1981 c. 69. Subsection (1) was amended by section 51 of, and paragraphs 1 and 2 of Part 1 of Schedule 5 to, the Countryside and Rights of Way Act 2000 (c. 37).

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

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

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

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

“the limits of deviation” means the limits of deviation for the scheduled work shown on the deposited plans;

“the limits of land to be acquired or used” means the limits of land to be acquired or used shown on the deposited plans;

“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;

“Order limits” means the limits of deviation and any additional limits of land to be acquired or used;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981⁽⁸⁾;

“restricted byway” has the meaning given by section 48(4) of the Countryside and Rights of Way Act 2000⁽⁹⁾;

“the scheduled work” means the work specified in Schedule 1 (scheduled work) to this Order or any part of it;

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

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

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

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

“watercourse” includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain.

(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) References in this Order to points identified by letters and numbers are to be construed as references to the points so shown on the deposited plans; and references to a sheet identified by a number is a reference to the sheet of that number contained in the deposited plans.

(4) All distances, directions, lengths and points stated in the description of the scheduled work or in any description of powers or lands are approximate, and the distance between the points on the scheduled work are taken to be measured along the scheduled work.

(5) References in this Order to Work No. 1 is a reference to the scheduled work as numbered in Schedule 1.

⁽⁸⁾ 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.

⁽⁹⁾ 2000 c. 37.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

3.—(1) Network Rail may construct and maintain the scheduled work.

(2) Subject to article 4 (power to deviate), the scheduled work may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (6), Network Rail may carry out and maintain within the Order limits such works as are required—

- (a) to provide the footpaths and bridleways specified in column (4) of Part 1 of Schedule 3 (level crossings and highways to be stopped up);
- (b) in connection with the extinguishment of the rights of way specified in column (3) of Parts 1 and 2 of Schedule 3; and
- (c) in connection with the upgrading of the footpaths specified in columns (2) and (3) of Schedule 5 (upgrading of certain footpaths to bridleways).

(4) Subject to paragraph (6), Network Rail may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled work and the works mentioned in paragraph (3), namely—

- (a) works to lay out footpaths and bridleways including any surfacing, fencing, stiles, gates, signs, ramps, steps and other means of access;
- (b) works to alter, or alter the position of, apparatus, including mains, sewers, drains and cables;
- (c) works to erect and construct such offices and other buildings, yards, slab, cranes, plant and machinery, apparatus, and other works and conveniences;
- (d) make, provide and maintain all such bridges, mounting blocks, approaches, roadways, walkways, retaining structures and means of access;
- (e) signalling works and telecommunications works;
- (f) works to alter the course of, or otherwise interfere with, watercourses;
- (g) landscaping, environmental and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled work; and
- (h) works for the benefit or protection of land or premises affected by the scheduled work.

(5) Subject to paragraph (6), Network Rail may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled work and works described in paragraphs (3) and (4), other than works that would interfere with a navigable watercourse.

(6) Paragraphs (3) to (5) only authorise the carrying out or maintenance of works—

- (a) within the limits of deviation; or
- (b) on land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) for the purposes specified in relation to that land in column (3) of that Schedule.

Power to deviate

4. In constructing or maintaining the scheduled work, Network Rail may—
- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work; and
 - (b) deviate vertically from the levels shown on the sections to any extent not exceeding 0.5 metres upwards or downwards.

Streets

Level crossings and highways to be stopped up

- 5.—(1) Subject to the provisions of this article, the level crossings listed in column (2) of Parts 1 and 2 of Schedule 3 (level crossings and highways to be stopped up) are stopped up and discontinued.
- (2) Upon the stopping up and discontinuance of the level crossings referred to in paragraph (1)—
- (a) all rights of way (whether public or private) over those crossings are extinguished; and
 - (b) all public rights of way over the highways specified in column (3) of Parts 1 and 2 of Schedule 3 are extinguished to the extent specified by reference to the points identified by letters and numbers.
- (3) Paragraph (2)(a) has effect regardless of anything in section 68 (accommodation works by company) of the Railways Clauses Consolidation Act 1845⁽¹⁰⁾ as incorporated in the Felixstowe Railway and Pier Act 1875⁽¹¹⁾ or any other enactment or instrument.
- (4) Upon the stopping up and discontinuance of Grimston Lane Level Crossing, section 15(5)(b) (further works and powers) of the British Transport Commission Act 1959⁽¹²⁾ ceases to have effect.
- (5) Upon the stopping up and discontinuance of Keeper’s Lane Level Crossing, the Railtrack Keeper’s Lane Level Crossing Order 1999⁽¹³⁾ is revoked.
- (6) In respect of the level crossings listed in Part 1 of Schedule 3, paragraphs (1) and (2) are not to have effect until the new highway or highways specified in column (4) in relation to that level crossing has or have been provided to the reasonable satisfaction of the highway authority in accordance with article 6 (creation and maintenance of new footpaths or bridleways) and is or are open for use.
- (7) 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 case of dispute, under Part 1 of the 1961 Act.
- (8) This article is subject to Schedule 4 (apparatus and rights of statutory undertakers etc. in stopped up highways).

Creation and maintenance of new footpaths or bridleways

- 6.—(1) The new footpaths and bridleways specified in column (4) of Part 1 of Schedule 3 (level crossings and highways to be stopped up) are to be completed to the reasonable satisfaction of the highway authority and are to be maintained by and at the expense of Network Rail for a period of 12 months from their completion and from the expiry of that period by and at the expense of the highway authority.

(10) 1845 c. 20.

(11) 1875 c. cxiv.

(12) 1959 c. xliv.

(13) An order made by the Secretary of State under section 1 of the Level Crossings Act 1983 (c. 16) on 8th March 1999 and which came into force on 21st March 1999.

(2) Paragraph (1) does not apply in relation to the structure of the bridge forming Work No. 1.

(3) On completion of each new footpath or bridleway in accordance with paragraph (1), a public right of way over it is created by virtue of this paragraph which has the legal status specified in column (5) of Part 1 of Schedule 3.

(4) Section 28 (compensation for loss caused by public path creation order)(**14**) of the 1980 Act is to apply to each new footpath or bridleway specified in column (4) of Part 1 of Schedule 3 as if the footpath or bridleway had been created by an order under section 26(**15**) (compulsory powers for the creation of footpaths, bridleways and restricted byways) of that Act.

(5) In its application by virtue of paragraph (4), section 28 of the 1980 Act is to have effect with the modifications mentioned in paragraphs (6) to (8).

(6) In subsection (1), for “the authority by whom the Order was made” substitute “Network Rail Infrastructure Limited”.

(7) For subsection (2), substitute—

“(2) A claim for compensation under this section is to be made to Network Rail Infrastructure Limited in writing within 6 months from the completion of the public right of way concerned in accordance with article 6(1) of the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018(**16**) and is to be served on Network Rail Infrastructure Limited by delivering it at, or by sending it by pre-paid post to the registered office of Network Rail Infrastructure Limited.”.

(8) Omit subsection (3).

(9) For the purposes of paragraphs (4) to (8), section 307 (disputes as to compensation which are to be determined by Lands Tribunal and related provisions) of the 1980 Act, in its application to section 28 by virtue of section 307(1), has effect as if in subsection (2) for “the authority from whom the compensation in question is claimed”, the words “Network Rail Infrastructure Limited” were substituted.

(10) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain the new footpath or bridleway, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that Network Rail had taken such care as in all the circumstances was reasonably required to secure that the part of the new footpath or bridleway to which the action relates was not dangerous to traffic.

(11) For the purposes of a defence under paragraph (10), the court must in particular have regard to the following matters—

- (a) the character of the new footpath or bridleway and the use which was reasonably expected to be made of it;
- (b) the standard of maintenance appropriate for a footpath or bridleway of that character and so used;
- (c) the state of repair in which a reasonable person would have expected to find the new footpath or bridleway;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new footpath or bridleway to which the action relates was likely to cause danger to users of the new footpath or bridleway; and
- (e) where Network Rail could not reasonably have been expected to repair that part of the new footpath or bridleway before the cause of action arose, what warning notices of its condition had been displayed,

(14) Section 28 has been amended by [S.I. 2006/1177](#).

(15) Section 26 has been amended by section 1(6) of, and paragraphs 1, 18(1) to (4) of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7) and by [S.I. 2006/1177](#).

(16) [S.I. 2018/937](#).

but for the purposes of such a defence it is not relevant to prove that Network Rail had arranged for a competent person to carry out or supervise the maintenance of the part of the new footpath or bridleway to which the action relates unless it is also proved that Network Rail had given the competent person proper instructions with regard to the maintenance of the new footpath or bridleway and that the competent person had carried out those instructions.

(12) A new footpath or bridleway is to be treated as completed to the satisfaction of the highway authority for the purpose of paragraph (1) if it fails to reply to a request for certification that the footpath or bridleway has been so completed within 28 days of receiving the request.

Upgrading of certain footpaths to bridleways

7.—(1) On the completion in accordance with article 6(1) of the new bridleways specified in column (4) of Part 1 of Schedule 3 (level crossings and highways to be stopped up) in the entry relating to Keeper’s Lane Level Crossing, the highways specified in column (2) of Schedule 5 (upgrading of certain footpaths to bridleways) cease to be designated as footpaths on the definitive map and statement and are to be designated as described in column (4) of that Schedule.

(2) In each case where a footpath has been redesignated, the redesignation is to have effect as if that footpath had been stopped up and immediately designated as a bridleway.

(3) Any person who suffers loss by reason of the change of status of the footpaths mentioned in paragraph (1) is entitled to compensation to be determined, in the case of dispute, under Part 1 of the 1961 Act.

Power to survey and investigate land

8.—(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 sub-paragraph (a), carry out ecological or archaeological investigations of 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 (15); and
- (b) a copy of any warrant issued under paragraph (8).

(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 land;
- (c) taking samples;
- (d) an aerial survey;

- (e) carrying out any other activities that may be required to facilitate compliance with the instruments mentioned in paragraph (5).
- (5) The instruments referred to in paragraph (4)(e) are—
 - (a) [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment⁽¹⁷⁾; or
 - (b) Council [Directive 92/42/EEC](#) of 21 May 1992 on the conservation of natural habitats and wild fauna and flora⁽¹⁸⁾.
- (6) If Network Rail obtains a warrant 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 a notice.
- (7) 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 (8);
 - (b) may not use force unless a justice of the peace has issued a warrant under paragraph (8) 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.
- (8) 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.
- (9) The force that may be authorised by a warrant is limited to that which is reasonably necessary.
- (10) 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 valuing land.
- (11) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.
- (12) Any evidence in proceedings for a warrant under this article must be given on oath.
- (13) 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.
- (14) 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 (13)(a) in the case of a highway authority; or
 - (b) under paragraph (13)(b) in the case of a street authority,that authority is deemed to have granted consent.

⁽¹⁷⁾ OJ No. L 26, 28.1.2012, p. 1.

⁽¹⁸⁾ OJ No. L 206, 22.7.1992, p. 7.

(15) 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, under Part 1 of the 1961 Act.

(16) Paragraphs (1) to (15) apply in relation to Crown land, however a person may only exercise the power conferred by paragraph (1) in relation to Crown land if the person has the permission of the appropriate authority.

(17) Nothing in this article overrides the requirement to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979⁽¹⁹⁾.

(18) In this article, “Crown land” and “the appropriate authority” have the meaning given in section 293⁽²⁰⁾ (preliminary definitions) of the 1990 Act.

Temporary stopping up and diversion of streets

9.—(1) Network Rail, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), Network Rail may use any street stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(3) Network Rail must provide reasonable access for pedestrians going to or from premises abutting on a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), Network Rail may temporarily stop up or divert the streets specified in columns (1) and (2) of Schedule 6 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(5) Network Rail must not exercise the powers conferred by this article—

(a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and

(b) in relation to any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.

(6) Any person who suffers loss by the 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.

(7) If within 28 days of receiving an application for consent under paragraph (5)(b) a street authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for the refusal that street authority is deemed to have granted consent.

⁽¹⁹⁾ 1979 c. 46.

⁽²⁰⁾ As amended by paragraph 6 of schedule 3 to the Planning and Compulsory Purchase Act 2004 (c. 5), paragraph 7(1) and (4) of Schedule 7 to the Planning (Wales) Act 2015 (anaw 4) and paragraphs 1 and 33 of Schedule 12 to the Housing and Planning Act 2016 (c. 22).

PART 3

ACQUISITION OF LAND

Powers of acquisition

Power to acquire land

10.—(1) Network Rail may acquire compulsorily—

- (a) so much of the land shown on the deposited plans which is 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 purposes 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 ancillary to its undertaking.

(2) This article is subject to article 13 (power to acquire new rights) and article 14 (temporary use of land for construction of works).

Application of Part 1 of the 1965 Act

11.—(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(21) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as so applied, 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)(22) (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 18 (time limit for exercise of powers of acquisition) of the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018(23)”.

(5) In section 11(1B)(24) (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(25) (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

(21) 1981 c. 67.

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

(23) S.I. 2018/937.

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

(25) Inserted by section 186(3) of the Housing and Planning Act 2016.

18 (time limit for exercise of powers of acquisition) of the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018”.

- (8) In Schedule 2A(26) (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 14 (temporary use of land for construction of works) of the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018.”

Application of the 1981 Act

- 12.**—(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(27) (time limit for general vesting declaration).
- (5) In section 5B(1)(28) (extension of time limit during challenge) for “section 23 of the Acquisition of Land 1981 (application to the 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 18 (time limit for exercise of powers of acquisition) of the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018”.
- (6) In section 6(29) (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(30) of the Transport and Works Act 1992”.
- (7) In section 7(31) (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(32) (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 10 (power to acquire land).

Power to acquire new rights

13.—(1) Network Rail may acquire compulsorily such easements or other rights over any land referred to in paragraph (1) of article 10 (power to acquire land) as may be required for any purpose

(26) As inserted by section 199(1) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016.

(27) Inserted by section 182(2) of the Housing and Planning Act 2016.

(28) Inserted by section 202(2) of the Housing and Planning Act 2016.

(29) 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.

(30) Inserted by S.I. 2017/16.

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

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

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) In the case of the land specified in columns (1) and (2) of Schedule 7 (land in which only new rights may be acquired) 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.

(3) 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 8 (modification of compensation and compulsory purchase enactments for creation of new rights)) where Network Rail acquires a right over land under paragraph (1) or (2) Network Rail is not required to acquire a greater interest in that land.

(4) Schedule 8 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.

Temporary Possession of Land

Temporary use of land for construction of works

14.—(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 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) 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(33) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been executed under section 4(34) (execution of declaration) of the 1981 Act;

(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) construct any works required as mentioned in article 3(3) (power to construct and maintain works) including in particular the works mentioned in article 3(4)(a); and

(e) construct any mitigation works on that land.

(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 authorised works for 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

(33) 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 and S.I. 2009/1307.

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

in connection with the carrying out of the authorised works or restore the land on which any permanent works have been constructed under paragraph (1)(d) or (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 26 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(35) (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 (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 from acquiring new rights over any part of that land under article 13 (power to acquire new rights).

(9) Where the 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(36) (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 11(1) (application of Part 1 of the 1965 Act).

Compensation

Disregard of certain interests and improvements

15.—(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 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

16.—(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.

(35) 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.

(36) Section 13 was amended by sections 62(3), 139 and 146 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).

(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 13 (power to acquire new rights), the tribunal must 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 required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to him 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 of private rights of way

17.—(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 and required for the purposes of this Order are extinguished on the appropriation of the land for any of those purposes by Network Rail.

(3) Any person who suffers loss by the extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under

(4) .

(5) This article does not apply in relation to any right of way to which section 271 or 272(37) (extinguishment of rights of statutory undertakers etc.) of the 1990 Act applies.

(6) Paragraphs (1) to (3) have effect subject to—

- (a) any notice given by Network Rail before—
 - (i) the completion of the acquisition of the land;
 - (ii) Network Rail's appropriation of it; or
 - (iii) Network Rail's entry on to 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 at any time between Network Rail and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (5)(b)—

- (a) is made with a person in or to whom the right of way is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

(37) Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

Time limit for exercise of powers of acquisition

18.—(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 11 (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 12 (application of the 1981 Act).

(2) The powers conferred by article 14 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents Network Rail 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 4

MISCELLANEOUS AND GENERAL

Planning permission

19. Planning permission which is deemed by a direction under section 90(2A)(**38**) (development with government authorisation) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land for the purposes of that Act) of that Act.

Power to transfer undertaking

20.—(1) Network Rail may, with the consent of the Secretary of State—

- (a) transfer to another person (“the transferee”) its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be agreed between Network Rail and the transferee; or
- (b) grant to another person (“the lessee”) for a period agreed between Network Rail and the lessee the right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights as may be so agreed.

(2) Where an agreement has been made by virtue of paragraph (1), references in this Order to Network Rail include references to the transferee or the lessee.

(3) The exercise of the powers conferred by any enactment in pursuance to any transfer or grant under paragraph (1), is subject to the same restrictions, liabilities and obligations as would apply under this Order if those powers were exercised by Network Rail.

Application of landlord and tenant law

21.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same; and

(38) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

(b) any agreement entered into by Network Rail with any person for the construction, maintenance, use or operation of the authorised works, or any part of them, so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person's use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants affects the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted to be done on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Defence to proceedings in respect of statutory nuisance

22.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990⁽³⁹⁾ in relation to a nuisance falling within paragraph (g) of section 79(1)⁽⁴⁰⁾ (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act, no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites) or a consent given under section 61⁽⁴¹⁾ (prior consent for work on construction sites) of the Control of Pollution Act 1974⁽⁴²⁾; or
- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article do not affect the application to the authorised works of section 122 (statutory authority as a defence to actions in nuisance, etc.) of the Railways Act 1993⁽⁴³⁾ or any rule of common law having similar effect.

⁽³⁹⁾ 1990 c. 43. Section 82 was amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25), section 103(1), (4) and (5) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and S.I. 2015/664.

⁽⁴⁰⁾ There are amendments to section 79 not relevant to this Order.

⁽⁴¹⁾ Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 (c. 25) and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

⁽⁴²⁾ 1974 c. 40.

⁽⁴³⁾ 1993 c. 43.

Obstruction of construction of authorised works

23. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of Network Rail in setting out the lines of the scheduled works or in constructing any authorised works; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of Network Rail,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Certification of plans etc.

24. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference, the sections and the deposited plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, sections 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

25.—(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⁽⁴⁴⁾ 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, that person's last known address 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 consent to the use of electronic transmission either in writing or by electronic transmission.

(44) 1978 c. 30.

(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

26. 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

27. 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.

The Neighbourhood Planning Act 2017

28. The provisions of Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017 do not apply as regards this Order.

Signed by authority of the Secretary of State for Transport

5th September 2018

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