
STATUTORY INSTRUMENTS

2009 No. 2728

The Network Rail (Reading) (Land Acquisition) Order 2009

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 land plans within the limits of land to be acquired or used and described in the book of reference as may be required for or in connection with the authorised works, and it may use any land so acquired for those purposes or for any other purposes ancillary to the undertaking.

(2) This article is subject to article 7 (new rights only to be acquired in certain lands) and paragraph (8) of article 10 (temporary use of land for construction of works) and does not apply to any land specified in Schedule 5 (land over which temporary rights of access may be exercised).

Application of Part 1 of the Compulsory Purchase Act 1965

4.—(1) Part 1 of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, shall apply to the acquisition of land under this Order—

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981 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), shall have effect as if section 4 (which provides a time limit for compulsory purchase of land) and paragraph 3(3) of Schedule 3 (which makes provision as to the giving of bonds) were omitted.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

5.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(1) shall apply as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), shall have effect with the following modifications.

(3) In section 3 (preliminary notices), for subsection (1) there shall be substituted—

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority shall include the particulars specified in subsection (3) in a notice which is—

- (a) given to every person with a relevant interest in the land with respect to which the declaration is to be made (other than a mortgagee who is not in possession); and
- (b) published in a local newspaper circulating in the area in which the land is situated.”.

(4) In that section, in subsection (2), for “(1)(b)” there shall be substituted “(1)” and after “given” there shall be inserted “and published”.

(5) In that section, for subsections (5) and (6) there shall be substituted—

“(5) For the purposes of this section, a person has a relevant interest in land if—

- (a) that person is for the time being entitled to dispose of the fee simple of the land, whether in possession or in reversion; or
- (b) that person holds, or is entitled to the rents and profits of, the land under a lease or agreement, the unexpired term of which exceeds one month.”.

(6) In section 5 (earliest date for execution of declaration)—

- (a) in subsection (1), after “publication” there shall be inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) shall be omitted.

(7) In section 7 (constructive notice to treat) in subsection (1)(a), the words “(as modified by section 4 of the Acquisition of Land Act 1981)” shall be omitted.

(8) References to the 1965 Act shall be construed as references to that Act as applied to the acquisition of land under article 3 (power to acquire land).

Power to acquire new rights

6.—(1) 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 section 8 of the 1965 Act (as substituted by paragraph 5 of Schedule 2 (modification of compensation and compulsory purchase enactments for creation of new rights)), where Network Rail acquires a right over land under paragraph (1), it shall not be required to acquire a greater interest in that land.

(3) Schedule 2 shall have 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.

New rights only to be acquired in certain lands

7. In the case of the land specified in Schedule 3 (land in which only new rights may be acquired), Network Rail’s powers of compulsory acquisition under article 3(1) (power to acquire land) shall be limited to the acquisition of such easements and other new rights in the land in accordance with article 6(1) (power to acquire new rights) as it may require for the purposes of constructing, maintaining, protecting, renewing and using the authorised works.

Power to acquire subsoil or airspace only

8.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of, or the airspace over, the 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 instead of acquiring the whole of the land.

(2) Where Network Rail acquires any part of or rights in the subsoil of, or airspace over, land under paragraph (1) it shall not be required to acquire an interest in any other part of the land.

(3) Paragraph (2) shall not prevent article 15 (acquisition of part of certain properties) from applying where the undertaker acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over highways

9.—(1) Network Rail may enter upon and appropriate so much of the subsoil of, or air-space over, any highway within the land referred to in article 3 (power to acquire land) as may be required for the purposes of the authorised works and may use the subsoil or air-space for those purposes or any other purpose ancillary to its railway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a highway without Network Rail being required to acquire any part of the highway or any easement or right in the highway.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without Network Rail acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(4) Paragraph (2) shall not apply in relation to—

- (a) any subway or underground building; or
- (b) any cellar, vault, arch or other construction in, on or under a highway which forms part of a building fronting onto the highway.

(5) Compensation shall not be payable under paragraph (3) to any person who is an undertaker to whom section 85 of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.