
STATUTORY INSTRUMENTS

2023 No. 815

**The Rother Valley Railway (Bodiam
to Robertsbridge Junction) Order 2023**

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

18.—(1) The Company may acquire compulsorily—

- (a) so much of the land shown on the Order plans as lying within the limits of deviation 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 land for ancillary works) (being land shown on the Order plans and described in the book of reference) as may be required for the purpose 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 that are ancillary to its railway undertaking as existing from time to time.

(2) This article is subject to paragraph (8) of article 22 (temporary use of land for construction of works) and article 42 (Crown rights).

Application of Part 1 of the 1965 Act

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

- (a) as it applies to a compulsory purchase to which the Acquisition of Land Act 1981(1) applies; and
- (b) as if this Order were a compulsory purchase order under that Act.

(2) 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)(2) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4”, substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article

(1) 1981 c. 67.

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

26 (time limit for exercise of powers of acquisition) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023.”

(5) In section 11(1B)(3) (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(4) (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 26 of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023”.

(8) In Schedule 2A(5) (counter-notice requiring purchase of land not in notice to treat)—

(a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 21 (power to acquire airspace only) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023, which excludes the acquisition of airspace only from this Schedule”; 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 articles 22 (temporary use of land for construction of works) and 23 (temporary use of land for maintenance of works) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023.”.

Application of the 1981 Act

20.—(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 sections 5A(6) (time limit for general vesting declaration).

(5) In section 5B(7) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 26 (time limit for exercise of powers of acquisition) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023”.

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

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

(5) Schedule 2A was inserted by paragraph 3 of Schedule 3 to the Housing and Planning Act 2016.

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

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

(6) In section 6(8) (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(9) (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(10) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 21 (power to acquire airspace only) of the Rother Valley Railway (Bodiam to Robertsbridge Junction) Order 2023, which excludes the acquisition of airspace only from this Schedule.”.

(9) References to the 1965 Act in the 1981 Act are construed as references to that Act as applied to the acquisition of land under article 18 (power to acquire land) by article 19 (application of Part 1 of the 1965 Act).

Power to acquire airspace only

21.—(1) The Company may acquire compulsorily so much of, or such rights in, the airspace over the land referred to in paragraph (1)(a) or (b) of article 18 (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 the Company acquires any part of, or rights in, the airspace over land under paragraph (1), the Company is not required to acquire an interest in any other part of the land.

Temporary possession of land

Temporary use of land for construction of works

22.—(1) The Company may, in connection with the carrying out of the authorised works—

(a) enter on and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 7 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule; and

(ii) subject to paragraph (11), any other Order land in respect of which no notice of entry has been served under section 11(11) (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(12) (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; and

(8) 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.

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

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

(11) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(12) 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.

- (d) construct any permanent works specified in relation to that land in column (3) of Schedule 7 or any mitigation works on that land.
- (2) Not less than 28 days before entering on and taking temporary possession of land under this article the Company must serve notice of the intended entry on the owners and occupiers of the land.
- (3) The Company 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)(a)(i) 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 (4) of Schedule 7; or
 - (b) in the case of land referred to in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of this land was taken unless the Company has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the 1981 Act.
- (4) Before giving up possession of land of which temporary possession has been taken under this article, the Company must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but the Company is not required to—
- (a) restore the existing pond within plot 76;
 - (b) replace a building removed under this article; or
 - (c) restore the land on which any works have been constructed under paragraph (1)(d).
- (5) The Company 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 as if it were a dispute under Part 1 of the 1961 Act.
- (7) Without affecting article 39 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(13) (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).
- (9) Where the Company takes possession of land under this article, the Company is not required to acquire the land or any interest in it.
- (10) Section 13(14) (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 19 (application of Part 1 of the 1965 Act).
- (11) Paragraph (1)(a)(ii) does not authorise the Company to take temporary possession of any land which it is not authorised to acquire under article 18 (power to acquire land).

Temporary use of land for maintenance of works

23.—(1) Subject to paragraph (2), at any time during the maintenance period relating to the new railway, the Company may—

(13) 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.

(14) 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 railway 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 the Company 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 the Company must serve notice of the intended entry on the owners and occupiers of the land.
- (4) The Company 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, the Company must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.
- (6) The Company 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 39 (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 the Company 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 the 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 19 (application of Part 1 of the 1965 Act).
- (11) In this article "the maintenance period" in relation to the new railway means the period of 5 years beginning with the date on which it is opened for use.

Compensation

Disregard of certain interests and improvements

24.—(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;
- (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.

Supplementary

Extinction or suspension of private rights of way

25.—(1) Subject to paragraph (5), 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 the Company, whether compulsorily or by agreement; or

(b) on the date of entry on the land by the Company under section 11(1)(**15**) of the 1965 Act, whichever is the sooner.

(2) Subject to paragraph (5), all private rights of way over land owned by the Company which, being within the limits of land which may be acquired shown on the Order plans, are required for the purposes of this Order are extinguished on the appropriation of the land for any of those purposes by the Company.

(3) Subject to paragraph (5), all private rights of way over land of which the Company takes temporary possession under this Order are suspended and unenforceable for as long as the Company remains in lawful possession of the land.

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

(5) This article does not apply in relation to any right of way to which section 271 or 272(**16**) of the 1990 Act (extinguishment of rights of statutory undertakers etc.) or paragraph 2 of Schedule 6 (provisions relating to statutory undertakers etc.) applies.

(6) Paragraphs (1), (2), (3) and (4) have effect subject to—

(a) any notice given by the Company before—

(i) completion of the acquisition of;

(ii) the Company’s appropriation of;

(iii) the Company’s entry onto; or

(iv) the Company’s taking temporary possession of,

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

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

(7) If any such agreement as is mentioned in sub-paragraph (6)(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

(15) 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) Measures 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

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

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.

Time limit for exercise of powers of acquisition

26.—(1) After the end of the period of 5 years beginning on the day on which the 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 19 (application of part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 of the 1981 Act as applied by article 20 (application of the 1981 Act).

(2) The powers conferred by article 22 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), save that nothing in this paragraph prevents the Company 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.