
WELSH STATUTORY INSTRUMENTS

2013 No. 767

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

PART 1

PRELIMINARY

Title and commencement

1. The title of this Order is the Network Rail (Pont Briwet) (Land Acquisition) Order 2013 and it comes into force on 16 April 2013.

Interpretation

2.—(1) In this Order—

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

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

“the 1990 Act” (“*Deddf 1990*”) means the Town and Country Planning Act 1990⁽³⁾;

“the 1991 Act” (“*Deddf 1991*”) means the New Roads and Street Works Act 1991⁽⁴⁾;

“address” (“*cyfeiriad*”) includes any number or address used for the purposes of electronic transmission;

“authorised works” (“*gweithfeydd awdurdodedig*”) means the works authorised by the Aberystwyth and Welsh Coast Railway (General) Act 1865⁽⁵⁾ for the reconstruction of a railway and bridge and its approaches at Pont Briwet;

“the book of reference” (“*y cyfeirlyfr*”) means the book of reference certified by the Welsh Ministers as the book of reference for the purposes of this Order;

“building” (“*adeilad*”) includes any structure or erection or any part of a building, structure or erection;

“electronic transmission” (“*trosglwyddiad electronig*”) means a communication transmitted—

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

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

“land plan” (“*plan y tir*”) means the plan certified by the Welsh Ministers as the land plan for the purposes of this Order;

“maintain” (“*cynnal a chadw*”) includes inspect, repair, adjust, alter, remove, reconstruct and replace, and “maintenance” (“*cynnal a chadw*”) is to be construed accordingly;

(1) 1961 c. 33.
(2) 1965 c. 56.
(3) 1990 c. 8.
(4) 1991 c. 22.
(5) 1865 c.cclxxxiii.

“Network Rail” (“*Network Rail*”) means Network Rail Infrastructure Limited (Company No. 02904587) whose registered office is at Kings Place, 90 York Way, London N1 9AG;

“the Order land” (“*tir y Gorchymyn*”) means the land shown edged red and coloured pink or blue on the land plan;

“owner” (“*perchennog*”), in relation to land, has the same meaning as in the Acquisition of Land Act 1981⁽⁶⁾;

“the tribunal” (“*y tribiwnlys*”) means the Upper Tribunal (Lands Chamber);

“the undertaking” (“*yr ymgymeriad*”) means the railway undertaking of Network Rail as existing from time to time.

(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 over its surface.

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 Order land shown on the land plan 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 (new rights only to be acquired in certain lands), paragraph (8) of article (temporary use of land for construction of works) and article 21 (saving for Crown).

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 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 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⁽⁷⁾ applies as if this Order were a compulsory purchase order.

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

- (3) In section 3 (preliminary notices), for subsection (1) there is substituted—

⁽⁶⁾ 1981 c. 67.

⁽⁷⁾ 1981 c. 66.

“(1) Before making a declaration under section 4 with respect to any land which is subject to a compulsory purchase order the acquiring authority must 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 is substituted “(1)” and after “given” there is inserted “and published”.

(5) In that section, for subsections (5) and (6) there is 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 is inserted “in a local newspaper circulating in the area in which the land is situated”; and
- (b) subsection (2) is 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)” are omitted.

(8) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article (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 (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 1 (modification of compensation and compulsory purchase enactments for creation of new rights)), where Network Rail acquires a right over land under paragraph (1), it is not required to acquire a greater interest in that land.

(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.

New rights only to be acquired in certain lands

7. In the case of the land specified in Schedule 2 (land in which only new rights may be acquired), Network Rail’s powers of compulsory acquisition under article (1) (power to acquire land) are limited to the acquisition of such easements and other new rights in the land in accordance with article (1) (power to acquire new rights) as it may require for the purposes of constructing, maintaining, protecting, renewing and using the authorised works.

Temporary possession or use of land

Temporary use of land for construction of works

8.—(1) Network Rail may, in connection with the carrying out of the authorised works, enter upon and take temporary possession of—

- (a) the land specified in column (2) of Schedule 3 (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; and
- (b) subject to paragraph (11), any of the other Order land in respect of which no notice of entry has been served under section 11 of the 1965 Act or no declaration has been made under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.

(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.

(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 in connection with the carrying out of the authorised works.

(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 prejudice to article (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) 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) except that Network Rail must not be precluded from acquiring new rights over any land specified in Schedule 2 (land in which only new rights may be acquired).

(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 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article (1) (application of Part 1 of the 1965 Act).

(11) Paragraph (1)(b) 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.

Temporary use of land for maintenance of works

9.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the authorised works, Network Rail may enter upon and take temporary possession of any Order land if

such possession is reasonably required for the purpose of maintaining the authorised works or any ancillary works connected with them.

(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 under Part 1 of the 1961 Act.

(8) Without prejudice to article (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) 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 of the 1965 Act applies to the temporary use of land pursuant to this article to the same extent as it applies to the acquisition of land under this Order by virtue of article (1) (application of Part 1 of the 1965 Act).

(11) In this article “the maintenance period” (“*y cyfnod cynnal a chadw*”), 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 increase in 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” (“*tir perthnasol*”) 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 increase 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 or airspace), 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 or airspace) under article (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 acquired; and
- (b) any increase in the 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

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⁽⁸⁾ as applied by article (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(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.

PART 3

MISCELLANEOUS AND GENERAL

Statutory undertakers, etc.

16. The provisions of Schedule 4 (provisions relating to statutory undertakers, etc.) have effect.

Certification of plans, etc.

17. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference and the land plan to the Welsh Ministers for certification that they are true copies of, respectively, the book of reference and the land plan 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

18.—(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 of the Interpretation Act 1978⁽⁹⁾ (references to service by post) 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

⁽⁸⁾ 1981 c. 66.

⁽⁹⁾ 1978 c. 30.

(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.

(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

19. 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.

Saving for SP Manweb plc

20. This Order does not authorise the acquisition, extinguishment or interference with any rights of SP Manweb plc in respect of its existing overhead electric cable within the land shown marked 1a and 1c on the land plan.

Saving for Crown

21. This Order does not authorise the compulsory acquisition of a Crown or Duchy interest in land, or except with the consent of the appropriate authority, any other interest in land in which there is a Crown or Duchy interest.

26 March 2013

Carl Sargeant
Minister for Housing and Regeneration, one of
the Welsh Ministers.