

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

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

(a) so much of the land shown on the deposited plans within the Order limits 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 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.

(2) This article is subject to article 25 (power to acquire new rights), article 26(2) (power to acquire subsoil or airspace only) and article 28 (temporary use of land for construction of works).

(3) This article does not apply to land specified in Schedule 13 (temporary use of land for access).

Application of Part 1 of the 1965 Act

23.—(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 1981 Act 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)(a) (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 33 (time limit for exercise of powers of acquisition) of the Network Rail (Leeds to Micklefield Enhancements) Order 20[XX]”.

(5) In section 11(1B)(b) (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(c) (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 34 (time limit for exercise of powers of acquisition) of the Network Rail (Leeds to Micklefield Enhancements) Order 20[XX]”.

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

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

“(2) But see articles 26(4) (power to acquire subsoil or airspace only) of the Network Rail (Leeds to Micklefield Enhancements) Order 20[XX], which excludes the acquisition of subsoil or 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 article 20 (protective works to buildings, roads and apparatus of a statutory undertaker), article 28 (temporary use of land for construction of works) or article 29 (temporary use of land for maintenance of works) or article 3 (temporary use of land for access) of the Network Rail (Leeds to Micklefield Enhancements) Order 20[XX].”.

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

24.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(a) 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 5 (earliest date for execution of declaration), omit the words from “, and this subsection” to the end.

(4) Omit section 5A(b) (time limit for general vesting declaration).

(5) In section 5B(c) (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 33 (time limit for exercise of powers of acquisition) of the Network Rail (Leeds to Micklefield Enhancements) Order 20[XX]”.

(6) In section 6(1)(b)(d) (notices after execution of declaration), 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(1)(a)(e) (constructive notice to treat), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) In Schedule A1(f) (counter-notice requiring purchase of land not in general vesting declaration) for paragraph 1(2) substitute—

“(2) But see article 26(3) (power to acquire subsoil or airspace only) of the Network Rail (Leeds to Micklefield Enhancements) Order 20[XX], which exclude acquisition with respect to the acquisition of subsoil or airspace only from this Schedule.”

(9) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 22 (power to acquire land) by article 23 (application of Part 1 of the 1965 Act).

Power to acquire new rights

25.—(1) Subject to paragraphs (4) and (5), Network Rail may acquire compulsorily such easements or other rights over any land which it is authorised to acquire under article 22 (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) In the case of the land specified in columns (1) and (2) of Schedule 10 (acquisition of new rights only) Network Rail’s powers of compulsory acquisition under article 22(1) are limited to the compulsory acquisition of such new rights over land as may be required for the purpose specified in relation to that land in column (3) of that Schedule.

(3) Without limitation on the scope of paragraph (1), the rights which may be acquired under that paragraph include the acquisition of rights over the land numbered 10-001, 10-002, 10-003 and 10-004 in the City of Leeds as shown on the deposited plans to provide a means of vehicular access for the benefit of the owners and occupiers of land affected by the closure of Garforth Moor Level Crossing, stopping up of Footpath Garforth 6 and extinguishment of rights;

(4) 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 11 (modification of compensation and compulsory purchase enactments for creation of new rights) where Network Rail acquires a right over land Network Rail is not required to acquire a greater interest in that land.

(5) Schedule 11 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.

(6) In any case where the acquisition of new rights under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of an undertaker Network Rail may, with the consent of the Secretary of State, transfer the power to acquire such rights to the undertaker in question.

(7) The exercise by an undertaker of any power in accordance with a transfer under paragraph (8) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by Network Rail.

(8) In paragraphs (6) and (7) “undertaker” means—

(a) any person who is a statutory undertaker for the purposes of the 1990 Act; and

(b) any public communications provider within the meaning of section 151(1) of the 2003 Act.

Power to acquire subsoil or airspace only

26.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in article 22(1) (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 the airspace over land under paragraphs (1), Network Rail is not required to acquire an interest in any other part of the land.

(3) The following do not apply in connection with the exercise of the power under paragraphs (1) or (2) in relation to subsoil or airspace only—

(a) Schedule 2A (counter-notice requiring purchase of land not in notice to treat) to the 1965 Act;

(b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the Compulsory Purchase (Vesting Declarations) Act 1981; and

(c) section 153(4A) (blighted land: proposed acquisition of part interest; material detriment test) of the 1990 Act.

(4) Paragraphs (2) and (3) are to be disregarded where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory.

PART 4

MISCELLANEOUS AND GENERAL

Open space land

38.—(1) As from the date on which Network Rail enters onto the Open Space Land under section 11(1) (powers of entry) of the 1965 Act or section 8 (vesting, and right to enter and take possession) of the

Compulsory Purchase (Vesting Declarations) Act 1981, the Open Space Land will be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article “the Open Space Land” means the land numbered 2-001, 2-002, 2-003 and 2-004 in the City of Leeds as shown on the deposited plans and forming part of an open space within the meaning of section 19(1) of the 1981 Act which the Secretary of State has certified as not exceeding 209 square metres and that the giving in exchange of other land for the Open Space Land is unnecessary for the purposes of section 19(1) of the 1981 Act.