

TRANSPORT AND WORKS ACT 1992

**TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE)
(ENGLAND AND WALES) RULES 2006**

**THE NETWORK RAIL (OLD OAK COMMON GREAT WESTERN MAINLINE
TRACK ACCESS) ORDER**

EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article and schedule in the draft Network Rail (Old Oak Common Great Western Mainline Track Access) Order (the "Order"), as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (S. I. 2006 No. 1466).

An application for the Order has been made by Network Rail Infrastructure Limited ("Network Rail"). The Order would confer powers to compulsorily acquire rights in land and take temporary possession of land, as well as to undertake certain ancillary works, all in connection with the development of a temporary road rail vehicle access onto the Great Western Main Line railway to enable delivery of the Old Oak Common station and provision of a permanent maintenance access point for road rail vehicles onto the Great Western Mainline, including any other works and operations incidental to or ancillary to such development (the "Development").

The majority of the works associated with the Development will be permitted by permitted development rights under Part 18 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015/596) and the High Speed Rail (London – West Midlands) Act 2017 (2017 c. 7).

This Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006 No. 1954) (the "Model Clauses"). Where there is a material departure from the Model Clauses an explanation is provided.

PART 1

PRELIMINARY

- Article 1* (*Citation and Commencement*) provides for the citation and the coming into force of the Order.
- Article 2* (*Interpretation*) contains provisions for the interpretation of words and phrases used in the Order. Definitions additional to those set out in the Model Clauses have been included in the

article to provide clarity, taking into account the specific provisions of the Order.

A new paragraph (3) explains that references to numbered plots are references to plot numbers on the deposited plans. This has been added to provide clarity and has precedent in the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027), the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

PART 2

WORKS PROVISIONS

Article 3 (*Power to construct and maintain works*) authorises Network Rail to construct and maintain certain works required in connection with the Development. Specifically, works to erect and construct temporary worksites and provide temporary haul routes which will be used in connection with the Development. These temporary works may be carried out on the land specified in schedule 2 (land of which temporary possession may be taken). The draft of article 3 departs from the model provision because of the limited nature and scope of the works authorised by the Order. The proposed wording has precedent in the recently approved Northumberland Line Order 2022.

PART 3

ACQUISITION AND POSSESSION OF LAND

Article 4 (*Application of Part 1 of the 1965 Act*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965 (c. 56). This provision is altered from the model clause to reflect changes introduced by the Housing and Planning Act 2016 (c. 22). Paragraphs (4) and (5) reduce, in certain circumstances, the minimum notice periods required to be given in notices to treat whilst paragraph (7) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under article 7 of this Order. These modifications have precedent in Schedule 14 to the High Speed Rail (London – West – Midlands) Act 2017 and in the recently approved The Network Rail (Essex and Others Level Crossing Reduction) Order 2022 (S.I. 2022 No. 651).

Article 5 (*Application of the 1981 Act*) provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66) and provides for that Act to have effect subject to certain modifications. It gives Network Rail the option to acquire land by this method rather than through the notice to treat procedure. This provision is altered from the model clause to omit section

5A (time limit for the execution of a general vesting declaration) introduced by the Housing and Planning Act 2016 (c. 22). These amendments have precedent in Schedule 9 to the High Speed Rail (London – West Midlands) Act 2017 and in the recently approved The Network Rail (Essex and Others Level Crossing Reduction) Order 2022 (S.I. 2022 No. 651).

Article 6 (*Power to acquire new rights*) enables Network Rail to acquire easements or other rights over the land specified in column (2) of Schedule 2 (*land in which only new rights etc., may be acquired*) by creating them as well as by acquiring rights already in existence.

Paragraph (2) provides that where Network Rail needs only to acquire rights over land, it is not obliged to acquire any greater interest in that land.

Paragraph (3) applies Schedule 3 for the purpose of modifying legislation relating to compensation so as to apply to the compulsory acquisition of new rights under this Order. These are consequential modifications which, as regards compensation legislation and the 1965 Act, have precedent in, for example, The Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S. I. 2020 No. 114).

Temporary possession or use of land

Article 7 (*Temporary use of land in connection with the development*) enables Network Rail, in connection with the carrying out of the development, to take temporary possession of land listed in columns (1) and (2) of Schedule 2 (land of which temporary possession may be taken).

The article departs from the model clause in allowing (as well as temporary works), permanent mitigation works which have been placed in that land to facilitate construction of the development to be constructed and left on the land, without a requirement for these to be removed. This would apply, for example, where mitigation is provided on behalf of a local flood authority, but Network Rail does not need to retain a permanent interest or rights in the land. This principle is well established and has been adopted in numerous Transport and Works Act Orders, Development Consent Orders and hybrid Bills and has precedent in the recently approved Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022.

Article 8 (*Disregard of certain interests and improvements*) provides that in assessing the compensation payable in respect of compulsory acquisition, the Upper Tribunal shall disregard any interest in land or any enhancement of an interest in land caused by improvements which the Upper Tribunal is satisfied were created or undertaken with a view to obtaining compensation or increased compensation.

Article 9 (*Extinction or suspension of private rights of way*) provides for the extinguishment of private rights of way over land owned by

Network Rail and required for the purpose of the Order, and the suspension of private rights of way in respect of land temporarily occupied and for payment of compensation.

Article 10 (*Time limit for exercise of powers of acquisition*) imposes a time limit of five years from the coming into force of this Order for the exercise of powers of temporary occupation of land.

PART 3

MISCELLANEOUS AND GENERAL

Article 11 (*Statutory undertakers, etc.*) provides that the Order will not affect the rights of statutory undertaker to maintain apparatus.

Article 12 (*Certification of plans, etc.*) provides for Network Rail to submit to the Secretary of State for certification the book of reference and the land plan after the making of this Order.

Article 13 (*Service of notices*) makes provisions as to the service of notices or other documents for the purposes of this Order.

Article 14 (*No double recovery*) prevents compensation being payable in respect of the same matter both under the Order and under any other enactment, contract or any other rule of law.

Article 15 (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration.