

Transport and Works Act 1992

**Transport and Works (Applications and Objections Procedure)
(England and Wales) Rules 2006**

THE NETWORK RAIL (LEEDS TO MICKLEFIELD ENHANCEMENTS) ORDER

Explanatory Memorandum

Rule 10(2)(b)

This memorandum explains the purpose and effect of each article and schedule in the draft 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).

Application for the Order has been made by Network Rail Infrastructure Limited ("Network Rail"). The Order would confer powers for the construction, maintenance and operation of works as part of the upgrade to the Transpennine Leeds to Micklefield route ("the project").

The Order would authorise works to construct new bridges (including demolition), street works and ancillary works.

The Order authorises Network Rail to acquire land, new rights, extinguish existing rights and to temporarily acquire and temporarily use land for the purposes of the works authorised by the Order. The Order also authorises the stopping up of level and accommodation crossings, the stopping up and diversion of highways and public rights of way (both permanently and temporarily) and the carrying out of street works.

The Order would also confer powers in connection with the construction and operation of the railway.

The draft Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006 No. 1954) ("the model clauses"), but on occasion it departs from them. Where there is a material departure from the model clauses, an explanation is provided.

PART 1

PRELIMINARY

Part 1 contains preliminary provisions

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

The definition of "authorised works" has been widened to include both the Scheduled Works and other works (which are the subject of the request for deemed planning permission) and also works which fall within permitted development rights and planning permissions which are to be secured by Network Rail, as are identified in the List of Permission and Consents. A definition of "planning permission" has also been included for this same reason. This is consistent with the approach taken in The Northumberland Line Order 2022 (S.I.2022 No.820).

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).

Article 3 (*Incorporation of the Railway Clauses Acts*) incorporates, subject to amendments, various provisions in the Railway Clauses Consolidation Act 1845 (c.20) and the Railways Clauses Act 1863 (c.92). The article omits those provisions referred to in the model clauses that are not relevant to this Order.

Article 4 (*Application of the 1991 Act*) provides for the application of the New Roads and Street Works Act 1991 (c.22) to the temporary stopping up, temporary alteration or temporary diversion of streets under article 11 (*power to alter layout etc. of streets*) and article 12 (*temporary stopping up of streets*) and the carrying out of street works under article 9 (*power to execute street works*), even if no street works (within the meaning of the 1991 Act) are being carried out. Article 4(2) is not a model clause but is well precedented, for example see article 3 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 4 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 4 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114). The effect of the amendment is to increase the number of provisions contained in the New Road and Street Works Act 1991 which are not to have effect in relation to the powers exercisable under the terms of this Order.

Article 5 (*Disapplication of legislative provisions*) is not in the model clauses. Article 5 provides for the disapplication of certain demolition controls under the Building Act 1984 (c.55) to demolitions carried out pursuant to the powers in the Order. These

are controls on demolition activities which are a necessary part of the project. This includes the demolition of existing buildings which are required to be demolished to enable the construction of new bridges comprised in Works nos. 1, 3, 4 and 5. The delivery of these railway works form part of the core purpose of the works to be authorised by the Order. Therefore in order to provide certainty that the core purposes of the project can proceed and be delivered, the Order disapplies the requirements for further notice of demolitions authorised by the Order to be given to the local authority under section 80(2)(b) of the Building Act 1984. In addition, the Order disapplies the requirements for further details on the carrying out of demolitions authorised by the Order to be provided pursuant to sections 81 and 82 of the Building Act 1984. Instead, the demolitions authorised by the Order, and the related request for deemed planning permission, will be managed and controlled through the terms of the Code of Construction Practice for this project which is to mandated through a proposed planning condition to the request for deemed planning permission. Accordingly, by virtue of such planning controls further controls are not required. The disapplication of these controls in the Building Act 1984 in relation to demolitions which are permitted under statutory authority is preceded in the High Speed Rail (West Midlands-Crewe) Act 2021 (c. 2) in paragraph 6 of Schedule 22.

Article 6 (*Application of local railway enactments*) is not in the model clauses. The purpose of Article 6 is to provide for the disapplication and repeal of certain provisions in the local railway legislation relating to the railway that is subject to the operation of this Order.

Accordingly, provisions relating to the Leeds and Selby Railway Act 1830 are identified for disapplication, namely Sections 5 and 10 which are prescriptive sections relating to the width of the railway and ascent of bridges for public roads over railway.

The approach to such disapplications is preceded in TWA Orders such as the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006 No. 3117) and the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780).

PART 2

WORKS PROVISIONS

Principal Powers

Article 7 (*Power to construct and maintain works*) authorises the construction and maintenance of the principal works proposed in the Order, which are described in Schedule 1 (*scheduled works*) to the Order and shown on the deposited plans and sections. The scheduled works must be constructed within the limits of deviation for those works.

Article 7(3) authorises the construction and maintenance of the works described in column (3) of Schedule 2 (*acquisition of certain lands for ancillary works*) on the land described in columns (1) and (2) of that Schedule. Article 7(4) authorises the construction of the works described in column (3) of Schedule 10 (*acquisition of new rights only*) on the land described in columns (1) and (2) of that Schedule.

Article 7 also provides for the construction and maintenance of works necessary or expedient for the purposes of the authorised works. These ancillary works are specified in Paragraph 5 and include, in an extension to the model clauses, descriptions of the types of works which it is envisaged are likely to be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works authorised by this Order. Such variation to the model clauses has precedent in article 5 of the Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005 No. 3105), in article 5 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027), article 7 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780), article 6 of the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923), article 6 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 6 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Article 7(7) provides that the carrying out or maintenance of works outside the limits of deviation may be done only on land which is specified in columns (1) and (2) of Schedule 2 (*acquisition of certain lands for ancillary works*), columns (1) and (2) of Schedule 10 (*acquisition of new rights only*), and columns (1) and (2) of Schedule 12 (*land of which temporary possession may be taken*) for the purposes specified in relation to that land in column (3) of each of these Schedules for the purposes specified in relation to that land respectively.

Article 7(8) provides that Network Rail may carry out and maintain (within the Order limits) landscaping and other works to mitigate the effect of the construction, maintenance or operation of the authorised works and works for the benefit or protection of land affected by the authorised works. Such provision is commonly included in Orders authorising railways, including article 5 of the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006 No. 3117) and article 6 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Article 8 (*Power to deviate*) provides for limits within which Network Rail can deviate in the construction and maintenance of the proposed works.

Streets

Article 9 (*Power to execute street works*) confers authority on Network Rail to interfere with, and execute works in or under, the streets specified in Schedule 3 (*streets subject to street works*) within the Order limits for the purposes of the proposed works.

Article 10 (*Stopping up of streets*) provides for Network Rail to permanently stop up the streets specified in Schedule 4 (*streets to be stopped up*). No street mentioned in Part 1 of Schedule 4 (*streets for which a substitute is to be provided*) is to be stopped up unless Network Rail has provided either the new street specified in Schedule 4 or a suitable temporary alternative route until the opening of the new street specified in Schedule 4. In accordance with the model clause, the streets specified in Part 2 of Schedule 4 (*streets for which no substitute is to be provided*) may only be stopped up if one of the conditions set out in Paragraph (4) has been met. Paragraph (5) provides for all rights of way along any street stopped up to be extinguished, and allows Network Rail to use the stopped up street for the purposes of its railway undertaking. Paragraph (6) provides for payment of compensation to

any person suffering loss of any private right of way under this article. Paragraph (8) provides that paragraphs (8) to (15) of article 17 (*which provide for creation of new public rights of way*) apply in relation to any replacement footpath or bridleway specified in column (4) of Part 1 of Schedule 4 as they apply to replacement rights of way specified in column (4) of Part 1 of Schedule 9.

Article 11 (*Power to alter layout etc. of streets*) is not found in the model clauses but permits Network Rail to temporarily alter the access and/or layout of streets in order to accommodate the authorised works, with the consent of the street authority (such consent not to be unreasonably withheld) or, in the case of alterations specified in Schedule 5 (*streets subject to alteration of layout*), without such consent. Alterations in street layout are required for a number of purposes set out in Paragraph (2). A street authority which fails to notify Network Rail of its decision in respect of an application for consent within 28 days of the application being made is deemed to have given its consent. This provision for deemed consent avoids unnecessary delays to the authorised project. A similar time limit has been inserted in the approvals processes elsewhere in this Order. This article has precedent in article 9 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780), article 8 of the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923) and article 11 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Article 12 (*Temporary stopping up of streets*) provides for the temporary stopping up of streets. In an extension to the model clauses, Paragraph (2) confers a power on Network Rail to use any street stopped up under the powers conferred by this article as a temporary working site. Such provision has precedent in Article 9(2) of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and Article 14(2) of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114). Where the street is specified in Schedule 6 (*streets to be temporarily stopped up*), Network Rail is obliged to merely consult the relevant street authority. This is on the basis that such stoppings up will have been considered in the application for the Order. If Network Rail wishes to temporarily stop up streets which are not so specified in Schedule 6, Paragraph (5)(b) provides that Network Rail will need to obtain the consent of the relevant street authority, which may attach reasonable conditions to any such consent but may not unreasonably withhold consent. In an extension to the model clauses, a time limit of 28 days is given, after which a street authority which fails to respond to an application for consent is deemed to have given its consent or if it refuses consent without giving any grounds for its refusal it is deemed to have given its consent. The provision of such deemed consent avoids unnecessary delays to the authorised project. This has precedent in article 9 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 14 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Article 13 (*Access to works*) gives Network Rail the power to provide or improve means of access at locations shown on the deposited plans and given in Schedule 7 (*access to works*). In addition, Network Rail, may, with the approval of the highway authority (such approval not to be unreasonably withheld), provide or improve means of access at locations within the Order limits as Network Rail may reasonably require. For the reasons given above, in an extension to the model clauses an additional Paragraph (2) has been inserted providing that if a highway authority does not

respond to an application for consent within 28 days of the application being made it is deemed to have given its consent. This has precedent in article 10 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027), article 10 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 16 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Article 14 (*Construction and maintenance of new or altered streets*) Paragraphs (1) and (3) make provision for new streets (subject to Paragraph ()) and street alterations and diversions to be completed to the reasonable satisfaction of the highway authority (or street authority in the case of alterations and diversions) and for their maintenance by Network Rail for a period of 12 months, and thereafter the relevant authority.

Paragraph (3) excludes from the scope of Paragraphs (1) and (2) the structure of any bridge or tunnel carrying a street over or under Network Rail's railway as Network Rail will be responsible for maintaining the structure of any such railway bridges or tunnels beyond the initial period of 12 months identified in Paragraphs (1) and (3).

Article 15 (*Construction of bridges*) provides for any bridges for carrying a highway constructed under the Order to be so constructed in accordance with plans and specifications to be approved by the highway authority (which approval shall not be unreasonably withheld). For the reasons given above, in an extension to the model clauses Paragraph (2) has been inserted in addition to the model clauses providing that if the highway authority does not respond within 28 days, or does not give any reasons for refusing consent, approval is deemed to have been given. This is preceded in article 16 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780) and article 18 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Article 16 (*Agreements with street authorities*) allows Network Rail to enter into agreements with street authorities relating to any street created or affected under this Order. These agreements would allow Network Rail and the street authority to agree points such as who is responsible for undertaking certain works affecting streets under this Order, a time period for the completion of the works and setting out the terms of any payment which may be made. The model clause is extended (Paragraph (1)(b)) so as to include agreements relating to the strengthening, improvement, repair or reconstruction of any street under powers conferred by this Order. This extension is preceded in article 17 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Level Crossings

Article 17 (*Replacement and closure of level crossings*) this article dealing with level crossings are not found in the model clauses but are preceded in Articles 15, 16 and 17 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679) and articles 8, 9 and 10 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114). This article authorises the permanent stopping up of the level crossings specified in Schedule 8 (*replacement and closure level crossings*) to the Order and the extinguishment of all rights over those crossings, including any private and public right of way. Network Rail may only exercise the powers in relation to crossings listed in Schedule 8 once it

has provided the new substituted footpath or bridleway (as identified in column (4) of Part 1 of Schedule 8) for the road to be stopped up.

Note that in relation to the closure of Peckfield Level Crossing column (3) offers two options for the alternative route, namely a footpath or bridleway. It is proposed the Secretary of State determine the most appropriate option. This is reflected also in Schedule 4 and Article 10.

Article 18 (*Accommodation Crossings*) makes provision for the extinguishment of all public or private rights of way (if any) over the accommodation crossings which are specified in Parts 1 and 2 of Schedule 9 (*accommodation crossings*). In the case of the accommodation crossings specified in Part 1 of Schedule 9 (*accommodation crossings for which a substitute is to be provided*), Network Rail may only exercise the powers once the substituted accommodation facility specified in relation to the accommodation crossing has been provided. Provision is made for the payment of compensation. This provision is not included in the model clauses but it follows provisions such as article 17 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679) and article 10 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Supplemental Powers

Article 19 (*Discharge of water*) enables Network Rail to discharge water into any watercourse, public sewer or drain in connection with the construction, operation or maintenance of the proposed works with the approval and (if provided) superintendence of the person to which the watercourse, public sewer or drain belongs (such approval may be subject to reasonable terms and conditions but must not be unreasonably withheld). The model clauses are extended so to also cover operation. In addition, the model clauses are extended so as to provide that any relevant person who fails to respond to an application for consent or approval within 28 days of the application being made is deemed to have given its consent. These extensions to the model clauses have precedent in the same context in article 19 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679), article 13 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 17 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044) and article 16 of the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923).

In Paragraph (7) the wording of the model clauses has been updated to refer to the environmental permitting regime introduced by the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016 No.1154).

Article 20 (*Protective works to buildings, roads and apparatus of a statutory undertaker*) permits Network Rail to carry out certain protective works (as defined in Paragraph (11)) before, during or after construction of the authorised works (up to a period of 5 years after that part of the authorised works is opened for use) to any building, and in an extension to the model clauses, any road or any apparatus of a statutory undertaker within the Order limits.

This will allow Network Rail to carry out any protective works that may be required to buildings, roads and apparatus of a statutory undertaker as a result of the proposed

works. Provision is made in the article for surveys and notice, and the payment of compensation.

This article as extended from the model clauses is preceded in article 20 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679), article 14 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933) and article 18 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044).

The protective works as defined in Paragraph (11) are preceded in article 15 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 20 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Article 21 (*Power to survey and investigate land*) confers upon Network Rail power (upon notice to every owner and occupier of that land) to survey and investigate land within the Order limits and to make excavations, trial holes and boreholes and carry out ecological or archaeological investigations and place on, leave on and remove apparatus. It makes provision for the payment of compensation. Approval (which may not be unreasonably withheld) for the making of trial holes is required, in the case of a carriageway or footway from the highway authority, or in the case of a private street, from the street authority. For the reasons given above in a departure from the model clauses a highway or street authority which fails to respond to an application for consent within 14 days of the application being made is deemed to have given its consent. Such provision has precedent in the same context in article 15 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 15 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027) and article 16 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446).

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Part 3 of the Order contains provisions for the compulsory acquisition of land, the subsoil of land, rights and interests in land and for the temporary possession of land for the purposes of, or in connection with, the authorised works and Network Rail's railway undertaking. It further provides for the payment of compensation.

Article 22 (*Power to acquire land*) confers on Network Rail powers of compulsory acquisition of land within the limits of deviation and identified on the deposited plans and described in the book of reference, for the purposes of the authorised works. It also authorises the compulsory acquisition of land specified in Schedule 2 (*acquisition of certain lands for ancillary works*) for the purpose specified in that Schedule. It also provides for any land so acquired to be used for other purposes connected with or ancillary to the railway undertaking. In an extension of the model clauses Paragraph (3) does not apply to land specified in Schedule 13 (*temporary use of land for access*) (see also Article 30). This provision has precedent in article 22 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Article 23 (*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 made to the 1965 Act by the Housing and Planning Act 2016 (c.22) as applied in Transport and Works Act Orders such as the Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017 No.1150) (article 19), Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) (article 18) and the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) (article 23). Paragraph (5) provides for a revised notice period of 1 month instead of 3 months for the service of Notice of Entry in cases where that notice only relates to entry onto land subject to the acquisition of an easement or other right so to exercise such an easement or right. This revised period would not apply to cases where the Notice of Entry relates to taking possession of land that is subject to acquisition. The Order would permit and in certain cases limit Network Rail to acquiring the lesser interest of rights in land. In such cases a lesser notice period is appropriate where the Notice of Entry is limited to only enabling the exercise of an easement or right acquired over land. This approach has precedent in the orders referred to above and has been accepted as appropriate in the same context in Schedule 6 of the High Speed Rail (London – West Midlands) Act 2017 (c.7) and Schedule 7 of the High Speed Rail (West Midlands – Crewe) Act 2021 (c.2).

Article 24 (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) 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 reflect changes made to the 1981 Act by the Housing and Planning Act 2016 (c.22) as applied in Transport and Works Act Orders such as the Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017 No.1150) (article 20), Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) (article 19) and Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) (article 24).

Article 25 (*Power to acquire new rights*) Paragraph (1) enables Network Rail to acquire rights over land it is authorised to acquire under Article 22 (*power to acquire land*) by the creation of new rights as well as by acquiring rights already in existence.

Paragraph (2) departs from the model clauses in providing that, in the case of land specified in columns (1) and (2) of Schedule 10 (*acquisition of new rights*), Network Rail's compulsory acquisition powers are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (3) of Schedule 10. In relation to such land the possibility of outright acquisition is not required. This approach to limiting the scope of acquisition of well preceded in a number in a number of orders including article 21 of the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923), article 20 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 25 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Paragraph (3) departs from the model clauses by authorising such rights as may be acquired under this article to be acquired on behalf of the owners and occupiers

affected by the closure of Highroyds level crossing. Such provision is based on article 25 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679) and article 25 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Paragraph (4) provides that where Network Rail needs only to acquire rights over land, it is not obliged to acquire any greater interest in that land.

Schedule 11, which is introduced by Paragraphs (4) and (5), makes modifications of relevant enactments concerning compensation and compulsory powers in relation to such acquisitions. Schedule 11 deviates from the model clauses to reflect changes made to the compulsory acquisition process by the Housing and Planning Act 2016 (c.22) as applied in recent Transport and Works Act Orders such as the Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017 No.1150) (Schedule 7), Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) (Schedule 6) and the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) (Schedule 13).

Paragraphs (6) and (7) are based on precedent found in article 18 of the Network Rail (Ipswich Chord) Order 2012 (S.I. 2012 No. 284), article 24 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780) and article 25 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114). These paragraphs provide for the acquisition of rights by an undertaker (as defined by Paragraph (8) rather than Network Rail, in circumstances where Order Land is required for the diversion or relocation of their apparatus and the Secretary of State gives written consent. The issue here is that the dominant tenement to be benefitted by such rights is the undertaking of the undertaker rather than Network Rail's land, and it is therefore necessary for them rather than Network Rail to exercise the Order powers to acquire rights. The exercise of such powers by an undertaker is subject to same restrictions, liabilities and obligations (including the payment of compensation) as would apply under this Order if that power were exercised by Network Rail.

Article 26 (*Power to acquire subsoil or airspace only*) authorises Network Rail to acquire the subsoil or airspace over any land without acquiring the whole of that land. In certain cases it will be necessary only to acquire a stratum of land above or below the surface (e.g. to accommodate a bridge over a road or foundations in the subsoil) and in the absence of Article 26 Network Rail would be obliged to acquire the whole interest in the land. It is based on the model clause relating to the acquisition of the subsoil but is extended to the acquisition of airspace as well. There are precedents for this in article 8 of the Network Rail (Reading) (Land Acquisition) Order 2009 (S.I. 2009 No. 2728), article 26 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679), article 22 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 26 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Following the principle established by the model clauses for cases where acquisition is limited to subsoil acquisition, Paragraph (2) provides that where Network Rail acquires part of, or rights in, the subsoil or under surface of land Network Rail is not required to acquire a greater interest in the land. Therefore, Paragraph (3) disapplies in connection with such acquisition the counter notice procedures in respect of land subject to such limited acquisition. The purpose of these provisions is to give

Network Rail the ability to minimise so far as is possible the extent of additional interests, not required for the project, that are to be compulsorily acquired, with consequently less impact on affected landowners, and lower payments of compensation, both of which are in the public interest. However, the operation of Paragraph (3) is subject to Paragraph (4) and is to be disregarded where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

This limitation on acquisition has precedent in article 23 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044).

Article 27 (*Rights under or over streets*) permits Network Rail to appropriate and use so much of the subsoil of, or airspace over, any street within the limits of deviation for the scheduled works and the limits of land to be acquired or used without being required to acquire any part of the street or any easement or right in it. Provision is made for the payment of compensation.

Article 28 (*Temporary use of land for construction of works*) enables Network Rail, in connection with the carrying out of the authorised works, to take temporary possession of (i) land listed in Schedule 12 (*land of which temporary possession may be taken*) and (ii) land within the scope of Paragraph (1)(a)(ii) which is subject to compulsory acquisition under the Order provided the compulsory acquisition process has not begun in relation to it. Paragraph (1)(a)(ii) is an addition to the model clauses. It follows the approach adopted in a number of recent Orders (e.g. article 27 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679, article 21 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No.2027), article 24 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 28 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114)). It allows greater flexibility in the event that following detailed design of the works it is decided that only temporary occupation rather than permanent acquisition of land is required.

The provisions also depart from the model clauses in allowing (as well as temporary works), permanent mitigation works specified in Schedule 12 (*land of which temporary possession may be taken*) and other permanent mitigation works 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 but Network Rail does not need to retain a permanent interest or rights in the land.

In respect of certain specified plots of land the power of temporary occupation and use is limited to the airspace above the buildings located on the land to allow for temporary utility diversions required in connection with the construction of the authorised works. This is provided for in Article 29(2) and Article 29(13). This limitation on temporary possession has precedent in article 27 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933).

Paragraph (13) provides that the provisions of the Neighbourhood Planning Act 2017 (c. 20) do not apply to any powers of temporary possession exercised under the Order. This is to provide certainty of the applicable regime to be applied, given the relevant provisions of that enactment are not yet in force.

Article 29 (*Temporary use of land for maintenance of works*) provides for Network Rail to take temporary possession of the land within the Order limits (other than that consisting of a house, garden or occupied building) for the purpose of maintaining the authorised works or ancillary works in the five years following the opening of the railway. Network Rail may construct temporary works and buildings on such land if they are reasonably required for the maintenance of the authorised or ancillary works. Provision is made for notice to be given. Paragraph (12) provides that the provisions of the Neighbourhood Planning Act 2017 (c. 20) do not apply to any powers of temporary possession exercised under the Order. This is to provide certainty of the applicable regime to be applied, given the relevant provisions of that enactment are not yet in force.

Article 30 (*Temporary use of land for access*) authorises the use of land specified in Schedule 13 (*temporary use of land for access*) for the purpose of temporary access (rather than possession) in connection with the construction of the authorised works. 7 days' notice is required to be given to the owners and occupiers unless access is urgently required. This is not a model clause but the purpose of the power is to minimise blight to the land in question where outright acquisition, the acquisition of permanent rights or temporary possession is not required. Paragraph (7) provides that the provisions of the Neighbourhood Planning Act 2017 (c. 20) do not apply to any powers of temporary possession exercised under the Order. This is to provide certainty of the applicable regime to be applied, given the relevant provisions of that enactment are not yet in force. This provision has precedent in article 11 of the Network Rail (Reading) (Land Acquisition) Order 2009 (S.I. 2009 No. 2728) and article 30 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Compensation

Article 31 (*Disregard of certain interests and improvements*) provides that in assessing the compensation payable in respect of compulsory acquisition the Upper Tribunal must disregard any interest in land or any enhancement of an interest in land caused by improvements which they are satisfied were created or undertaken with a view to obtaining compensation or increased compensation.

Supplementary

Article 32 (*Extinction or suspension of private rights of way*) provides for the extinguishment of private rights of way over land compulsorily acquired, and the suspension of private rights of way in respect of land temporarily occupied and for payment of compensation.

In addition to the provisions of the model clauses, Paragraph (7) of this article provides for Network Rail to exclude the application of any or all of the provisions of this article and to enter into agreements making contrary provision. Such provision has precedent, in particular, in article 40 of the Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005 No. 120) and is useful for the purposes of flexibility. That precedent has been adapted so that restrictions on powers to extinguish or suspend private rights of way in agreements are only effective if such agreements are made in contemplation of the Order, see for example article 26 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No.2027) and article 32 of the Network Rail

(Ordsall Chord) Order 2015 (S.I. 2015 No. 780), article 28 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 32 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

The model clause is also extended so as to apply to private rights of way over land subject to the imposition of restrictive covenants or the compulsory acquisition of rights. In such circumstances, the private rights are extinguished only insofar as they are incompatible with the exercise of the right or the burden of the restrictive covenant. This has precedent in article 28 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446).

Article 33 (*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 compulsory acquisition of land.

PART 4

MISCELLANEOUS AND GENERAL

Article 34 (*Power to transfer undertaking*) would confer on Network Rail powers to transfer or lease the undertaking authorised by the Order. This would require the consent of the Secretary of State. However, Paragraph (4) makes specific provision for the ability to transfer the powers to Northern Gas Networks Limited (or successor) in relation to Work No.2 and Work no.6 both of which require the diversion of a gas main. This has precedent in Article 34 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No.114).

Article 35 (*Defence to proceedings in respect of statutory nuisance*) provides Network Rail with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990 (c.43) if it can show that works are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65 of the Control of Pollution Act 1974 (c.40), or that the nuisance complained of is a consequence of the operation of the works authorised by the Order and that it cannot reasonably be avoided. Although not a model clause, this is a provision which has now become common. Article 38 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679) and article 28 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No.2027) are examples of recent precedents.

Following article 35 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), Paragraph (3) extends this provision to provide a defence against abatement proceedings brought by a local authority under section 80(4) of the 1990 Act.

Article 36 (*Planning permission*) ensures that once constructed, the railway will be treated as operational land and so will have the benefit of permitted development rights under Part 8 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015 No. 596).

Article 37 (*Power to lop trees overhanging the authorised works*) enables Network Rail to fell or lop trees and shrubs for the purposes of preventing obstruction or

interference with the authorised railway and danger to passengers and users. Provision is included for compensation.

Article 38 (*Open space land*) This article is not in the model clauses. This article provides that when Network Rail enters onto open space land, as defined in Paragraph (2), under section 11(1) of the Compulsory Purchase Act 1965 or section 8 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. This article is included to address open space land for which it has been certified under section 19 of the Acquisition of Land Act 1981 (c.67) that land in exchange is unnecessary.

Article 39 (*Power to operate and use railway*) authorises Network Rail to operate and use the railway.

Article 40 (*Obstruction of construction of authorised works*) makes it a criminal offence without reasonable cause to obstruct the construction of the authorised works and to interfere with Network Rail's apparatus.

Article 41 (*Traffic regulation*) this article is not a model clause. This article is required to enable Network Rail to make provision, with the consent of the traffic authority, to revoke, amend or suspend existing traffic regulation orders or to make traffic regulation for the matters set out in Paragraph (1) for the purposes of, or in connection with, or in consequence of the construction, maintenance or operation of the authorised works. It also includes a specific provision to put in place a traffic regulation order to replicate the weight restriction of vehicles restricted to use Austhorpe Lane Bridge (as currently exists). This power is preceded in article 39 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933)

Network Rail's exercise of this power is subject to the consent of the traffic authority, which consent shall not be unreasonably withheld. For the reasons given above in relation to Article 9, Paragraph (3) has been inserted to provide that if within 28 days of the application for consent being made a traffic authority fails to respond to an application for consent or refuses consent without giving any grounds for its refusal, the traffic authority is deemed to have given its consent.

Article 42 (*Temporary Traffic Regulation*) this article is not a model clause. It is required to enable Network Rail to make provision, with the consent of the traffic authority to make, amend or suspend traffic regulation order as may be needed in order to facilitate the construction of the authorised works.

Article 43 (*Traffic signs*) authorises Network Rail to place and maintain traffic signs for the purposes of the authorised works or in connection with a traffic regulation order made under Article 42 and makes provision requiring Network Rail to consult with and enter into arrangements with the traffic authority for this purpose. This article is based upon a preceded provision in article 38 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933) and article 44 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446).

Article 44 (*Removal of Human Remains*) makes provision for the Network Rail must follow in the event human remains are discovered during the carrying out of works.

Article 45 (*Use of private roads for construction and operation*) this authorises Network Rail to use privately owned roads for construction purposes and makes provision for compensation. This article is based on Article 14 of the Network Rail (Cambridge South Infrastructure Enhancements) Order 2022 (SI. 2022 No. 1406).

Article 46 (*Disclosure of confidential information*) makes disclosure of certain confidential information obtained upon entry to certain premises under article 20 (*protective works to buildings, roads and apparatus of a statutory undertaker*) or article 21 (*power to survey and investigate land*) a criminal offence.

Article 47 (*Statutory undertakers etc.*) introduces Schedule 14 to the Order which contains specific safeguards for statutory undertakers.

Article 48 (*Protection of interests*) introduces Schedule 15 to the Order which is in five parts containing detailed protective provisions for specific bodies.

Article 49 (*Certification of plans etc.*) requires Network Rail to submit the book of reference, the deposited plans and the deposited sections to the Secretary of State for certification after the making of this Order.

Article 50 (*Service of notices*) makes provision as to the service of notices or other documents for the purposes of the Order.

Article 51 (*No double recovery*) prevents compensation being payable in respect of the same matter both under the Order and under any other enactment, contract or rule of law.

Article 52 (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration.

**DEPARTMENT FOR TRANSPORT
202[X]**

Rule 10(2)(b)

Transport and Works Act 1992

**Transport and Works (Applications and
Objections Procedure) (England and
Wales) Rules 2006**

**THE NETWORK RAIL (LEEDS TO
MICKLEFIELD ENHANCEMENTS) ORDER**

**Explanatory Memorandum required
under Rule 10(2)(b)**

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