

201X No.

TRANSPORT AND WORKS, ENGLAND

TRANSPORT ENGLAND

The Network Rail (Suffolk Level Crossing Reduction) Order

Made - - - - - ***

Coming into force - - - - - ***

CONTENTS

PART 1

PRELIMINARY

1. Citation and commencement
2. Interpretation
3. Application of the 1991 Act
4. Disapplication of legislative provisions

PART 2

CROSSINGS

5. Power to construct and maintain works
 6. Power to deviate
 7. Power to alter layout etc. of streets
 8. Power to execute street works
 9. Stopping up of footpath
 10. Temporary stopping up of streets
 11. Construction and maintenance of new or altered streets
 12. Access to works
 13. Highways subject to redesignation
 14. Closure of level crossings subject to opening of new rights of way
 15. Closure of level crossings
 16. Creation and maintenance of new highway
- Supplemental Powers*
17. Discharge of water
 18. Power to survey and investigate land

PART 3
ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

- 19. Application of Part 1 of the 1965 Act
- 20. Application of the Compulsory Purchase (Vesting Declarations) Act 1981
- 21. Power to acquire new rights

Temporary possession or use of land

- 22. Temporary use of land for construction of works
- 23. Temporary use of land for maintenance of works

Compensation

- 24. Disregard of certain interests and improvements
- 25. Set-off for enhancement in value of retained land

Supplementary

- 26. Extinction or suspension of private rights of way
- 27. Time limit for exercise of powers of acquisition

PART 4
TRAFFIC SIGNS

- 28. Traffic signs

PART 5
MISCELLANEOUS AND GENERAL

- 29. Power to lop trees overhanging the authorised works
- 30. Obstruction of construction of authorised works
- 31. Certification of plans, etc.
- 32. Service of notices
- 33. Protection of interests
- 34. No double recovery
- 35. Arbitration

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- SCHEDULE 1 — SCHEDULED WORKS
 - SCHEDULE 2 — CLOSURE OF LEVEL CROSSINGS
 - SCHEDULE 3 — REDESIGNATION OF HIGHWAYS
 - SCHEDULE 4 — LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE
ACQUIRED
 - SCHEDULE 5 — LAND OF WHICH TEMPORARY POSSESSION MAY BE
TAKEN
 - SCHEDULE 6 — STREETS SUBJECT TO ALTERATION OF LAYOUT
 - SCHEDULE 7 — STREETS SUBJECT TO STREET WORKS
 - SCHEDULE 8 — STREETS TO BE TEMPORARILY STOPPED UP
 - SCHEDULE 9 — ACCESS TO WORKS
 - SCHEDULE 10 — APPLICATION OF COMPULSORY PURCHASE
LEGISLATION
 - SCHEDULE 11 — FOR THE PROTECTION OF DRAINAGE AUTHORITY

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006^(a) for an Order under sections 1 and 5 of the Transport and Works Act 1992^(b) (“the 1992 Act”).

[Objections to that application have been withdrawn.]

[The Secretary of State caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act.]

[The Secretary of State, having considered [the objections made and not withdrawn] [and the report of the person who held the inquiry], has determined to make an Order giving effect to the [proposals comprised in the application [without modifications] [with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals]] [proposals concerned with modifications which in the opinion of the Secretary of State make a substantial change in the proposals].

[The Secretary of State having considered representations duly made under section 13 of the 1992 Act, has determined to make the Order applied for with modifications.]

Notice of the Secretary of State’s determination was published in the London Gazette on [X] 201[X].

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 2 to 5, 7, 8, 10, 11 and 16 of Schedule 1 to, the 1992 Act makes the following Order:—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Suffolk Level Crossing Reduction) Order 201[X] and comes into force on [X] 201[X].

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961^(c);

“the 1965 Act” means the Compulsory Purchase Act 1965 ^(d);

“the 1980 Act” means the Highways Act 1980^(e);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981^(f);

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- (a) S.I. 2006/1466, as amended by S.I. 2010/439, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590 and S.I. 2013/755.
- (b) 1992 c. 42. Section 1 was amended by paragraphs 51 and 52 of Schedule 2 to the Planning Act 2008 (c. 29). Section 5 was amended by S.I. 2012/1659.
- (c) 1961 c. 33
- (d) 1965 c. 56
- (e) 1980 c. 66
- (f) 1918 c.66

“the 1984 Act” means the Road Traffic Regulation Act 1984(a)

“the 1990 Act” means the Town and Country Planning Act 1990 (b);

“the 1991 Act” means the New Roads and Street Works Act 1991(c);

“address” includes any number or address used for the purposes of electronic transmission;

“the authorised works” means the works authorised by the Order;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“bridleway” has the same meaning as in the 1980 Act;

“building” includes any structure or erection or any part of a building, structure or erection;

“byway open to all traffic” has the same meaning as in the Wildlife and Countryside Act 1981(d);

“carriageway” has the same meaning as in the 1980 Act;

“cycle track” has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act(e);

“deposited plans” means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;

“deposited sections” means the sections certified by the Secretary of State as the sections for the purposes of this Order;

“electronic transmission” means a communication transmitted—

- (a) by means of an electronic communications network; or
- (b) by other means but while in electronic form;

“footpath” and “footway” have the same meanings as in the 1980 Act;

“highway authority” has the same meaning as in the 1980 Act;

“limits of deviation” means the limits for the scheduled works shown on the deposited plans;

“maintain” includes inspect, repair, adjust, alter, remove, reconstruct and replace and maintenance is to be construed accordingly;

“Network Rail” means Network Rail Infrastructure Limited (company No. 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN;

“the Order limits” means the limits of deviation and the limits of land to be acquired or used shown on the deposited plans;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981(f);

“the scheduled works” means the works specified in Schedule 1 (scheduled works) or any part of them;

“statutory undertaker” means —

- (c) any person who is a statutory undertaker for the purposes of the 1990 Act; and
- (d) any public communications provider within the meaning of section 151(1) of the Electronic Communications Act 2003(g);

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

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- (a) 1984 c.27
 - (b) 1990 c. 8
 - (c) 1991 c. 22
 - (d) 1981 c.69
 - (e) The definition of “cycle track” was amended by section 1 of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic (Consequential Provisions) Act 1988 (c. 54).
 - (f) 1981 c. 67.
 - (g) 2003 c. 21.

“the tribunal” means the Lands Chamber of the Upper Tribunal; and

“the undertaking” means the railway undertaking of Network Rail as existing from time to time.

(2) All distances, directions and lengths referred to in this Order are approximate and are taken to be measured between the points shown on the deposited plans.

(3) References in this Order to points identified by letters and numbers are construed as references to points so shown on the deposited plans.

(4) 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 airspace over its surface.

(5) References in this Order to numbered plots are references to plot numbers on the deposited plans.

Application of the 1991 Act

3.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(a) (dual carriageways and roundabouts) of the Highways Act 1980.

(2) The provisions of the 1991 Act mentioned in paragraph (3) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by Network Rail under the powers conferred by article 10 (temporary stopping up of streets) and the carrying out of works under article 8 (power to execute street works) whether or not the stopping up, alteration or diversion, or the carrying out of such works, constitutes street works within the meaning of that Act.

(3) The provisions of the 1991 Act(b) referred to in paragraph (2) are—

- section 59(c) (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 68 (facilities to be afforded to street authority);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

(4) Nothing in article 10 (construction and maintenance of new or altered streets) —

- (a) prejudices the operation of section 87 (prospectively maintainable highways) of the 1991 Act; and Network Rail is not, by reason of any duty under that article to maintain a street, to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or

(a) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

(b) Sections 54, 55, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c.18).

(c) As amended by section 42 of the Traffic Management Act 2004 (c.18)

- (b) has effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Disapplication of legislative provisions

4.—(1) The following provisions do not apply in relation to any works executed under the powers conferred by this Order—

- (a) Regulation 12(1)(a) (environmental permit required for operating a regulated facility) of the Environmental Permitting (England and Wales) Regulations 2016^(a) in relation to the carrying out of a relevant flood risk activity;
- (b) section 23 (prohibition on obstacles etc. in watercourses) of the Land Drainage Act 1991^(b);
- (c) the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of that Act, which require consent or approval for the carrying out of the works; and
- (d) the provisions of the Neighbourhood Planning Act^(c) insofar as it relates to temporary occupation of land under articles 22 and 23 of this Order.

PART 2

CROSSINGS

Power to construct and maintain works

5.—(1) Network Rail may construct and maintain the scheduled works.

(2) Subject to article 6 (power to deviate) the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (4), Network Rail may construct and maintain within the Order limits such works as are required—

- (a) to provide the public rights of way specified in column (5) of Part 1 of Schedule 2;
- (b) in connection with the extinguishment of the rights of way specified in column (4) in Parts 1 and 2 of that Schedule; and
- (c) in connection with the redesignation of the highways specified in column (1) of Schedule 3 to the extent specified in that column;
including —
- (d) works to lay out footpaths, footways, bridleways and cycle tracks, including any surfacing, fencing, stiles, gates, signs, ramps, steps, other means of access, and mounting blocks;
- (e) works or other operations, for the purposes of drainage and flood prevention, including embankments, including ground reprofiling, culverts and retention ponds
- (f) works or other operations to level or stabilise the condition of any land, including ground reprofiling and embankments;
- (g) works to install or alter the position of apparatus, including mains, sewers, drains and cables;
- (h) works in the highway including provision of lighting, bollards and other traffic restraint systems, and signage;

^(a) 5.1.2016/1154

^(b) 1991 c. 59

^(c) 2017 c. []

or other conveniences as may be necessary or expedient for the purposes of the provision of or extinguishment of the rights of way or redesignation of highways.

(4) Subject to paragraph (5), Network Rail may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled and authorised works described in paragraph (3).

(5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on—

- (a) land specified in column (1) of Schedule 4 (land in which only new rights etc. may be acquired) for the purposes specified in column (3) of that Schedule; or
- (b) land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule.

(6) Network Rail may, within the Order limits—

- (a) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance and operation of the authorised works (other than works authorised by this paragraph); and
- (b) carry out and maintain works for the benefit or protection of land affected by the authorised works (other than works authorised by this paragraph).

Power to deviate

6. In constructing or maintaining any of the scheduled works, Network Rail may—

- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work; and
- (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent upwards not exceeding 3 metres; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Power to alter layout etc. of streets

7.—(1) Network Rail may for the purposes of the authorised works alter the layout of, or carry out any works in, the street specified in columns (1) and (2) of Schedule 6 (streets subject to alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to paragraph (3), Network Rail may, for the purposes of constructing and maintaining any authorised work, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, Network Rail may—

- (a) increase the width of the whole or part of any carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level, create or increase the width of any such kerb, footpath, footway, bridleway, cycle track or verge; and
- (c) reduce the width of the carriageway of the street.

(3) Network Rail must restore to the reasonable satisfaction of the street authority any street which has been temporarily altered under this article.

(4) The powers conferred by paragraph (2) are not to be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) If within 28 days of receiving an application for consent under paragraph (4) a street authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

Power to execute street works

8.—(1) Network Rail may, for the purposes of the authorised works, enter on any of the streets specified in Schedule 7 (streets subject to street works) as are within the Order limits to the extent necessary and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Stopping up of footpath

9. In the Parish of Bacton

- (a) footpath 019 Bacton between points P055, P056, P056A, P057, P058 and P059; and
- (b) the path not on the definitive map between points P056, P057A and P057

are stopped up and all public rights of way between those points are extinguished.

Temporary stopping up of streets

10.—(1) Network Rail, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any street and may for any reasonable time—

- (a) divert the traffic from the street; and
- (b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), Network Rail may use any street stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(3) Network Rail must provide reasonable access for pedestrians going to or from premises abutting on a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), Network Rail may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 8 (streets to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(5) Network Rail must not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) in relation to any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If within 28 days of receiving an application for consent under paragraph (5)(b) a street authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

Construction and maintenance of new or altered streets

11.—(1) This article applies to streets which are not a byway open to all traffic, bridleway or footpath.

(2) Any street to be constructed or altered under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed between Network Rail and the

highway authority, must be maintained by and at the expense of Network Rail for a period of 12 months from its completion and from the expiry of that period by and at the expense of the highway authority.

(3) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of Network Rail for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street authority.

(4) Paragraphs (2) and (3) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of Network Rail and except as provided in those paragraphs Network Rail is not liable to maintain the surface of any street under or over which the scheduled works are constructed, or the immediate approaches to any such street.

(5) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain a street under this article, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that Network Rail had taken such care as in all the circumstances was reasonably required to secure that the part of the street to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and
- (e) where Network Rail could not reasonably have been expected to repair that part of the street before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that Network Rail had arranged for a competent person to carry out or supervise the maintenance of the part of the street to which the action relates unless it is also proved that Network Rail had given the competent person proper instructions with regard to the maintenance of the street and that the competent person had carried out those instructions.

(7) Nothing in this article—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act; and Network Rail is not by reason of any duty under this article to maintain a street to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Access to works

12.—(1) Network Rail may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 9 (access to works); and
- (b) with the approval of the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as Network Rail reasonably requires for the purposes of the authorised works.

(2) If a highway authority fails to notify Network Rail of its decision within 28 days of receiving an application for approval under paragraph (1), that highway authority is deemed to have granted approval.

Highways subject to redesignation

13.—(1) Subject to the provisions of this article, the highway specified in column (2) of Schedule 3 (redesignation of highways), on the completion of the authorised works relevant to that highway, ceases to be a highway of the description specified on the definitive map and statement as specified in column (3) and is to be designated as a highway as described in column (4) of Schedule 3.

(2) Where a highway has been redesignated, the redesignation is to have effect as if that highway had been stopped up and immediately redesignated as described in column (4) of Schedule 3.

(3) Expressions used in this article and the Wildlife and Countryside Act 1981(a) have the same meaning in this article as in that Act.

Closure of level crossings subject to opening of new rights of way

14.—(1) Subject to paragraphs (3) and (5), the level crossings specified in column (2) of Part 1 of Schedule 2 (closure of level crossings) are stopped-up and discontinued.

(2) Subject to paragraph (5), upon the stopping up and discontinuance of the level crossings referred to in paragraph (1)—

- (a) any rights of way over those crossings are extinguished to the extent specified in column (2) of Part 1 of Schedule 2; and
- (b) any public rights of way specified in column (4) of Part 1 of Schedule 2 are extinguished to the extent specified, by reference to the numbers and letters shown on the deposited plans.

(3) Paragraphs (1) and (2) are not to have effect until, in respect of each level crossing in that table, the new highway specified in column (5) has been constructed and completed, to the extent specified by reference to the numbers and letters shown on the deposited plans, to the reasonable satisfaction of the highway authority in accordance with article 16 (creation and maintenance of new highway) and is open for use.

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

(5) This article does not apply so as to extinguish the rights of statutory undertakers.

Closure of level crossings

15.—(1) Subject to paragraphs (3) and (4), the level crossings listed in column (2) of Part 2 of Schedule 2 (closure of level crossings) are stopped-up and discontinued.

(2) Upon the stopping up and discontinuance of the level crossings referred to in paragraph (1)—

- (a) any rights of way over those crossings are extinguished; and
- (b) any public rights of way specified in column (4) of Part 2 of Schedule 2 are extinguished to the extent specified, by reference to the numbers and letters shown on the deposited plans.

(a) 1981 c.69

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

(4) This article does not apply so as to extinguish the rights of statutory undertakers to maintain their apparatus.

Creation and maintenance of new highway

16.—(1) The new highways specified in column (5) of Part 1 of Schedule 2 (closure of level crossings) are to be completed to the reasonable satisfaction of the highway authority and are to be maintained by and at the expense of Network Rail for a period of 12 months from their completion and after the expiry of that period by and at the expense of the highway authority.

(2) On completion of each new highway in accordance with paragraph (1), it is to have the legal status specified in column (5) of Part 1 of Schedule 2.

(3) Section 28 (compensation for loss caused by public path creation order) of the 1980 Act is to apply to each new highway specified in column (5) of Part 1 of Schedule 2 as if that new highway had been created by a public path creation order.

(4) In its application by virtue of paragraph (3), section 28 of the 1980 Act is to have effect with the modifications mentioned in paragraphs (5) to (7):

(5) In sub-section (1), substitute the words “Network Rail” for the words “the authority by whom the Order was made”.

(6) For sub-section (2), substitute—

“(2) A claim for compensation under this section is to be made to Network Rail in writing within 6 months from the coming into force of the Network Rail (Suffolk Level Crossing Reduction) Order 201[X](a) and is to be served on Network Rail by delivering it at, or by sending it by pre-paid post to [the registered office of Network Rail Infrastructure Limited].”

(7) Sub-section (3) is omitted.

(8) For the purposes of paragraphs (3) to (7), section 307 (disputes as to compensation which are to be determined by Lands Tribunal and related provisions) of the 1980 Act, in its application to section 28 by virtue of section 307(1), is to have effect as if in sub-section (2) for the words “the authority from whom the compensation in question is claimed”, the words “Network Rail” are substituted.

(9) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain the new highway, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that Network Rail had taken such care as in all the circumstances was reasonably required to secure that the part of the new highway to which the action relates was not dangerous to traffic.

(10) For the purposes of a defence under paragraph (9), the court must in particular have regard to the following matters—

- (a) the character of the new highway and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a highway of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the new highway;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new highway to which the action relates was likely to cause danger to users of the new highway; and

(a) S.I. 201[X]/[XXXX]

- (e) where Network Rail could not reasonably have been expected to repair that part of the new highway before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that Network Rail had arranged for a competent person to carry out or supervise the maintenance of the part of the new highway to which the action relates unless it is also proved that Network Rail had given the competent person proper instructions with regard to the maintenance of the new highway and that the competent person had carried out those instructions.

(11) The new highways are to be treated as completed to the satisfaction of the highway authority for the purpose of paragraph (1) if it fails to reply to a request for certification that it is satisfied with the work within 28 days of receiving the request.

(12) Where any highway created under this article passes over a scheduled work, the highway extends to include the scheduled work.

Supplemental Powers

Discharge of water

17.—(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by Network Rail under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(a).

(3) Network Rail must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) Network Rail must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Network Rail must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) Network Rail must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016(b).

(8) If a person who receives an application for consent or approval fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, or a local authority; and

(a) 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(b) S.I. 2016/1154

- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991^(a) have the same meaning as in that Act.

Power to survey and investigate land

18.—(1) Network Rail may for the purposes of this Order—

- (a) survey or investigate any land shown within the Order limits;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as Network Rail thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 7 days' notice has been served on every owner and occupier of the land.

(3) Any person entering land under this article on behalf of Network Rail—

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph (4); and
- (b) may not use force unless a justice of the peace has issued a warrant under paragraph (4) authorising the person to do so,
- (c) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.

(4) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

- (a) that another person has prevented or is likely to prevent the exercise of that power, and
- (b) that it is reasonable to use force in the exercise of that power.

(5) The force that may be authorised by the warrant is limited to that which is reasonably necessary.

(6) A warrant authorising the person to use force must specify the number of occasions on which Network Rail can rely on the warrant when entering and surveying or valuing land.

(7) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

(8) Any evidence in proceedings for a warrant under this article must be given on oath.

(9) No trial holes are to be made under this article—

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(10) Network Rail must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

(a) 1991 c.57.

(11) If either a highway authority or a street authority which receives an application for consent fails to notify Network Rail of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (9)(a) in the case of a highway authority; or
- (b) under paragraph (9)(b) in the case of a street authority,

that authority is deemed to have granted consent.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Application of Part 1 of the 1965 Act

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

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

(2) In its application by virtue of paragraph (1), the 1965 Act has effect subject to the following modifications.

(3) Omit section 4 (time limit for compulsory purchase of land).

(4) In section 11(1B) (power to enter on and take possession of land the subject of a notice to treat after giving the specified notice) –

- (a) 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”; and
- (b) after “11A(4)” insert “or (6) and (7)”.

(5) In section 11A (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, to the extent that the newly identified person is the owner, lessee or occupier of the land.”;
- (c) In subsection 4(a), for “14 days” substitute “7 days”; and
- (d) at the end insert—

“(5) Subsections (6) and (7) apply for the purposes of determining the period to be specified in the notice of entry under section 11(1) served on the newly identified person in a case where subsection (4) does not apply.

(6) The period specified in the notice must be—

- (a) in a case where the notice to treat relates only to an easement or other right over land, a period that ends no earlier than the end of the period of 7 days beginning with the day on which the notice of entry is served, and
- (b) in any other case, a period that ends no earlier than the end of the period of 28 days beginning with the day on which the notice of entry is served.

(7) The period specified in the notice must end no earlier than the end of the period specified in any previous notice of entry given by the acquiring authority in respect of the land.”

(a) 1981 c.67

(6) 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 27 of the Network Rail (Suffolk Level Crossing Reduction) Order 201[X](a)”.

(7) In Schedule 2A (proposals to acquire part only of a house, building or factory) –

(a) omit paragraphs 1(2) and 14(2); and

(b) at the end insert –

“PART 4

INTERPRETATION

30 In this Schedule, references to entering on and taking possession of land do not include doing so under articles 22 (temporary use of land for construction of works) and 23 (temporary use of land for maintenance of works) of the Network Rail (Suffolk Level Crossing Reduction) Order 201[X].”

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

20.—(1) The 1981 Act applies as if this Order were a compulsory purchase order.

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

(3) Omit sections 5 and 5A (which respectively set out the earliest date, and the time limit, for the execution of a general vesting declaration).

(4) In section 6 (notices after execution of general vesting declaration), for the reference to the invitation under section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981 substitute a reference to the invitation under section 14A(3) of the Transport and Works Act 1992(b)

(5) In section 7 (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(6) In Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(7) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of any interests in land under this order.

Power to acquire new rights

21.—(1) Network Rail may acquire compulsorily such easements or other rights over the land specified in column (1) of Schedule 4 (land in which only new rights etc., may be acquired) as may be required for the purposes specified in column (2) of that Schedule, by creating them as well as by acquiring easements or other rights already in existence.

(2) Subject to—

(a) Schedule 2A to the 1965 Act (as substituted by paragraph 2(8) of Schedule 10 (acquisition of rights in land: application of compulsory purchase legislation); and

(b) Schedule A1 to the 1981 Act (as modified by paragraph 4(7) of that Schedule);

where Network Rail acquires a right over land under paragraph (1) Network Rail is not required to acquire a greater interest in that land.

(a) S.I. 201[X]/XXXX

(b) Section 14A of the Transport and Works Act 1992 was inserted by article 5 of the Housing and Planning (Compulsory Purchase) (Corresponding Amendments) Regulations 2017 (S.I. 2017/16)

(3) Schedule 10 has effect for the purpose of modifying the enactments relating to compensation, and the provisions of the 1965 Act and the 1981 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.

Temporary possession or use of land

Temporary use of land for construction of works

22.—(1) — Network Rail may in connection with the carrying out of the authorised works enter upon and take temporary possession of the land specified in columns (1) and (2) of Schedule 5 (land of which temporary possession may be taken) for the purposes specified in relation to that land in column (3) of that Schedule.

(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 for the purposes of which temporary possession of that land was taken.

(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 or restore the land on which any permanent works have been constructed under article 5 (power to construct and maintain 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 affecting article 34 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(a) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage for which compensation is payable under paragraph (5).

(8) Where Network Rail takes possession of land under this article, it is not required to acquire the land or any interest in it.

(9) Section 13(b) (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article.

Temporary use of land for maintenance of works

23.—(1) Subject to paragraph (2), at any time during the maintenance period relating to the authorised works, Network Rail may—

- (a) enter upon and take temporary possession of any land within Order limits if such possession is reasonably required for the purpose of maintaining the authorised works; and
- (b) construct such temporary works (including the provision of means of access) and buildings on the land as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise Network Rail to take temporary possession of—

(a) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(b) 1965 c. 56. Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

- (a) any house or garden belonging to a house;
- (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 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 affecting article 34 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where 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 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of rights in land under this Order by virtue of article 19 (application of Part 1 of the 1965 Act).

(11) In this article "the maintenance period", in relation to the authorised works, means the period of 12 months beginning with the date on which the authorised works are completed.

Compensation

Disregard of certain interests and improvements

24.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

- (a) any interest in land; or
- (b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "relevant land" means the land acquired from the person concerned or any other land with which he 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 enhancement in value of retained land

25.—(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) 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), under article 21 (power to acquire new rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in 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

Extinction or suspension of private rights of way

26.—(1) Subject to the provisions of this article—

- (a) all private rights of way 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; and
- (b) all private rights of way over land subject to the compulsory acquisition of rights under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right as from the date of the acquisition of the right by Network Rail, whether compulsorily or by agreement, or on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act, whichever is the sooner.

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

(3) Paragraph (1) and (2), have effect subject to—

- (a) any notice given by Network Rail before Network Rail's taking temporary possession of the land, that any or all of those paragraphs do not apply to any right of way specified in the notice; and
- (b) any agreement made between Network Rail and the person in or to whom the right of way in question is vested or belongs which makes reference to this article; whether that agreement was made before or after any of the events mentioned in sub-paragraph (a), or before or after the coming into force of this Order.

(4) If any such agreement as is mentioned in sub-paragraph (3)(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.

Time limit for exercise of powers of acquisition

27. The powers conferred by article 21 (power to acquire new rights), article 22 (temporary use of land for construction of works) and article 23 (temporary use of land for maintenance of works) cease at the end of the period of 5 years beginning with the day on which this Order comes into force, except that 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 4

TRAFFIC SIGNS

Traffic signs

28.—(1) Network Rail may, for the purposes of or in connection with the construction or operation of the authorised works, place or maintain traffic signs on any street within the Order limits, or any other street as reasonably required for conveying information to traffic.

(2) Network Rail—

- (a) must consult with the traffic authority as to the placing of signs; and
- (b) unless the traffic authority is unwilling to do so and subject to any directions given under section 65 (powers and duties of traffic authorities as to placing of traffic signs) of the 1984 Act, must enter into arrangements with the traffic authority for any such signs to be placed and maintained by the traffic authority.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs includes a power to give directions to Network Rail as to traffic signs under this article; and, accordingly, the powers conferred by paragraph (1) are exercisable subject to and in conformity with any directions given under that section.

(4) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

PART 5

MISCELLANEOUS AND GENERAL

Power to lop trees overhanging the authorised works

29.—(1) Network Rail may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to persons using the authorised works.

(2) In exercising the powers conferred by paragraph (1), Network Rail must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Obstruction of construction of authorised works

30. Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of Network Rail in setting out the lines of the scheduled works or in constructing any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of Network Rail,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Certification of plans, etc.

31. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference and the deposited plans to the Secretary of State for certification that they are true copies of, respectively, the book of reference and deposited plans 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

32.—(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 (references to service by post) of the Interpretation Act 1978^(a) 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
- (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.

(a) 1978 c. 30.

(9) This article does not exclude the employment of any method of service not expressly provided for by it.

Protection of interests

33. Schedule 11 (for the protection of drainage authority) has effect.

No double recovery

34. 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.

Arbitration

35. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

Date

[]
Head of the Transport and Works Act Orders Unit
Department for Transport

SCHEDULE 1

SCHEDULED WORKS

Article 5

In the County of Suffolk

District of St. Edmundsbury, Parish of Barrow

Work No 1 – A footbridge, commencing at a point 205 metres south of the bridge carrying the Cambridge to Ipswich railway over Coalpit Lane and terminating at a point 5 metres east of its commencement.

District of Mid Suffolk, Parish of Thurston

Work No 2 – A footbridge, commencing at a point 375 metres east of the junction of Barrell's Road with Stoney Lane and terminating at a point 5 metres south of its commencement.

Parish of Bacton

Work No 3 – A footbridge, commencing at a point 200 metres south-west of the junction of Pretymen Avenue with Pound Hill and terminating at a point 5 metres south-east of its commencement.

District of Babergh, Parish of Wherstead

Work No 4 – A footbridge, commencing at a point 330 metres south-west of the junction of Footpath 034 Wherstead with Bridleway 041 Wherstead and terminating at a point 5 metres south-east of its commencement.

Parish of Brantham

Work No 5 – A footbridge, commencing at a point 120 metres north-west of the junction of the B1080 with the A137 and terminating at a point 5 metres west of its commencement.

Work No 6 – A footbridge, commencing at a point 220 metres north-east of the junction of Footpath 013 Brantham with Restricted Byway 014 Brantham and terminating at a point 5 metres north-east of its commencement.

Work No 7 – A footbridge, commencing at a point 295 metres south-east of the junction of Footpath 013 Brantham with Restricted Byway 014 Brantham and terminating at a point 18 metres south-east of its commencement.

SCHEDULE 2

Article 5

CLOSURE OF LEVEL CROSSINGS

Part 1

CLOSURE OF LEVEL CROSSINGS SUBJECT TO OPENING OF NEW HIGHWAY

(1) Area	(2) <i>Extent of level crossing to be stopped up and discontinued</i>	(4) <i>Extent of highway to be extinguished</i>	(5) <i>Status and extent of new highway</i>
County of Suffolk District of Forest Heath Parish of Higham and District of St. Edmundsbury Parish of Barrow	Higham Ground Frame between points P010 and P011A	Footpath 006 Barrow between points P009 and P010 Path not on definitive map between points P010, P011A and P011 Footpath 004 Higham between points P009 and P010A Footpath 002 Higham between points P164 and P165 Footpath 003 Higham between points P164 and P163	Footpath between points P007, P008, P011, P011B and P012 Bridleway between points P012A P013 and P014 Footpath between points P015, P016 and P017
District of St. Edmundsbury Parishes of Great Barton and Bury St. Edmunds	Cattishall between points P018A and P019A	Footpath 017 Great Barton between points P018, P018A, P019A and P019	Bridleway between points P020, P021 and P022
District of Mid Suffolk Parish of Thurston	Barrells between points P024 and P025 and Grove Farm between points P030A and P032	Footpath 005 Thurston between points P023 and P024 and between points P025 and P026	Footpath between points P032, P034 and P035 Footpath between points P029 and P031

		<p>Footpath not on definitive map between points P024 and P025</p> <p>Footpath 011 Thurston between points P029, P030A, P030 P033 and P032</p> <p>Footpath not on definitive map between points P027, P028A, P028, P037 and P036</p>	
Parish of Elmswell	<p>Hawk End Lane between points P040 and P041</p> <p>Lords No 29 between points P043 and P044</p>	<p>Footpath 012 Elmswell between points P038, P039, P040 and P041</p> <p>Footpath 009 Elmswell between points P043 and P047</p> <p>Path not on definitive map between points P044 and P043</p>	<p>Footpath between points P041 and P042</p> <p>Footpath between points P044 and P045 and between points P046 and P047</p>
Parish of Wetherden	Mutton Hall between points P048 and P049	<p>Footpath 035 Wetherden between points P048 and P049</p> <p>Path not on definitive map between points P051, P051A and P048</p>	Footpath between points P049 and P050
Parish of Bacton	Fords Green between points P060A and P061A and Bacton between points P063 and P066	<p>Footpath 014 Bacton between points P060, P060A, P061A and P061</p> <p>Path not on definitive map between points P062, P062A, P060B and P060</p> <p>Footpath 013</p>	<p>Footpath between points P061, P062A and P063 and between points P060, P064 and P065</p> <p>Footpath between points P070, P071, P072 and P073</p>

		<p>Bacton between points P063, P066 and P067</p> <p>Path not on definitive map between points P066, P068 and P069</p>	
Parish of Finningham	Gislingham between points P075 and P075B	Bridleway 010 Finningham between points P074, P075 and P075B	Bridleway between points P074, P076 and P077
Parishes of Gislingham and Wickham Skeith	Paynes between points P079 and P080	<p>Footpath 026 Gislingham between points P078, P079 and P080</p> <p>Footpath 022 Gislingham between points P080, P081 and P082</p> <p>Path not on definitive map between points P078, P083 and P080 and between points P081 and P084</p>	Footpath between points P082, P085 and P086
Parish of Needham Market	Stacpool between points P090 and P091	Footpath 033 Needham Market between points P089, P090 and P091	Footpath between points P091 and P092
Parish of Barham	Broomfield between points P094 and P095	<p>Footpath 012 Barham between points P093, P094, P095 and P096 and between points P101 and P102</p> <p>Path not on the definitive map between points P099 and P102</p>	Footpath between points P097 and P098 and between points P099, P100 and P101
District of Babergh Parish of Wherstead	Pannington Hall between points P124 and P125	Footpath 34 Wherstead between points P110, P111, P112, P113, P114, P115 and P116	Footpath between points P117 and P118 between points P119 and P120 and between points P121, P121A and P122

		Path not on definitive map between points P123, P124, P125, P126, P114, P127 and P115	
Parish of Bentley	Island between points P128A and P130A	Footpath 018 Bentley between points P128, P128A, P130A and P130	Footpath between points P130, P131, P132 and P133 and between points P128, P134 and P135
		Path not on definitive map between points P129, P129A, P131A and P131	
	Buxton Wood between points P138 and P144	Footpath 022 Bentley between points P136, P137 and P138A and between points P144 and P139	Footpath between points P139, P140, P141, P142 and P143
		Path not on definitive map between points P136, P136A and P137	
		Path not on definitive map between points P138A, P138 and P144	
Parish of Brantham	Brantham High Bridge between points P155 and P155A	Footpath 006 Brantham between points P145, P146, P155A and P155	Footpath between points P155, P148, P149, P150 and P151 and between points P152 and P153
		Path not on definitive map between points P154, P146, P147A and P147	
	Sea Wall between points P156 and P159	Footpath 013 Brantham between points P158, P157, P156, P159 and P160	Footpath between points P160, P161 and P162

Part 2**CLOSURE OF LEVEL CROSSINGS NOT SUBJECT TO OPENING OF NEW HIGHWAY**

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Extent of level crossing to be stopped up and discontinued</i>	<i>(3)</i> <i>Legislation to be disapplied (where relevant)</i>	<i>(4)</i> <i>Extent of public right of way to be extinguished</i>
County of Suffolk District of Forest Heath Parish of Newmarket	Weatherby between points P001 and P002	N/A	Path not on definitive map between points P001 and P002
Parish of Higham	Higham between points P004 and P005		Footpath 001 Higham between points P003, P004, P005 and P006
District of Mid Suffolk Parishes of Bacton, Old Newton with Dagworth and Haughley	Leggetts between points P054 and P054B		Footpath 012 Haughley between points P052 and P053 Footpath 006 Old Newton and Dagworth between points P053, P054, P054A and P054B Path not on definitive map between points P054B and P054C
Parish of Mellis	Abbotts between points P087 and P088		Path not on definitive map between points P087 and P088

SCHEDULE 3

Article 11

REDESIGNATION OF HIGHWAYS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Highway</i>	<i>(3)</i> <i>Current designation</i>	<i>(4)</i> <i>Proposed designation</i>
County of Suffolk District of Mid Suffolk Parish of Mellis	BOAT 011 Mellis between points R001 and R002	Byway open to all traffic	Bridleway

SCHEDULE 4

Article 20

LAND IN WHICH ONLY NEW RIGHTS ETC., MAY BE ACQUIRED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which rights may be acquired</i>
County of Suffolk District of St. Edmundsbury Parish of Bury St. Edmunds	01	Access for creation of public right of way Access for removal of level crossing Access for maintenance
Parish of Great Barton	01, 02, 03, 05	Access for maintenance
District of Mid Suffolk Parish of Bacton	06, 07 08	Access for maintenance Access for maintenance and creation of public right of way
Parish of Elmswell	13, 15, 16, 19, 20, 21, 22, 23, 24, 25	Access for creation of public right of way Access for removal of level crossing
Parish of Haughley	01, 02	Access for removal of level crossing
Parish of Old Newton with Dagworth	07	Access for removal of level crossing
Parish of Finningham	05, 07	Access for maintenance
Parish of Gislingham	02, 08, 09	Access for creation of public right of way Access for removal of level crossing
Parish of Mellis	07	Access for removal of level crossing
Parish of Needham Market	01, 02, 03, 05, 11	Access for removal of level crossing and creation of public right of way
Parish of Barham	01A, 02, 07	Access for removal of level crossing
District of Babergh Parish of Wherstead	01	Access for removal of level crossing and creation of public right of way
Parish of Brantham	01, 28 13, 16, 18, 33	Access for removal of level crossing Access for creation of public right of way

SCHEDULE 5

Article 22

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the land plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
County of Suffolk District of Forest Heath Parish of Newmarket	02, 03, 04	Landscaping
Parish of Higham	01, 03, 09	Access for removal of level crossing
	04	Working site and access
District of St. Edmundsbury Parish of Barrow	05, 06, 10, 12	Worksite
	1A, 04	Worksite and creation of public right of way
	01, 07, 11, 15, 16, 17, 18, 21, 22, 23, 24, 25, 26	Creation of public right of way
	02, 03	Footbridge
	09	Access for removal of level crossing
Parish of Bury St. Edmunds	01	Creation of public right of way
Parish of Great Barton	01, 02, 03, 05	Creation of public right of way and access for removal of crossing
	04, 10, 12	Worksite
District of Mid Suffolk Parish of Thurston	01, 03, 10, 15	Worksite
	02, 04	Footbridge
	05, 06, 11, 12	Access for removal of level crossing
	09	Worksite and creation of public right of way
	14	Access for removal of level crossing and creation of public right of way
	16, 17	Creation of public right of way
Parish of Elmswell	01, 04, 05, 06, 17, 18	Creation of public right of way
	08	Access for removal of level

	11, 12, 14, 26, 27, 28, 29, 31, 32, 33, 34	crossing Worksite
Parish of Weatherden	02	Access for removal of level crossing and creation of public right of way
	03, 04	Worksite
	06, 07	Access for removal of level crossing
Parish of Old Newton and Dagworth	01	Access for removal of level crossing
	02	Access for removal of level crossing and worksite
	04, 05, 06	Worksite
Parish of Haughley	03	Access for removal of level crossing
	04	Worksite
Parish of Bacton	01, 03, 04, 12, 16, 24, 25, 27, 28, 30, 31	Worksite
	10, 11, 14, 15, 17, 18, 19	Creation of public right of way and access for removal of level crossing
	20, 21, 22, 29	Access for removal of level crossing and creation of public right of way
	32, 33, 34	Creation of public right of way
	35	Footbridge
	36	Access for construction of authorised works and worksite
Parish of Finningham	01, 02, 09, 10, 11	Creation of public right of way
	07, 12	Worksite
Parish of Gislegham	01, 04, 06, 10	Worksite and access for removal of level crossing
	05, 14	Access for removal of level crossing
	07	Worksite
	11, 12	Creation of public right of way
Parish of Mellis	01, 03, 04, 05	Worksite

Parish of Needham Market	04, 06	Creation of public right of way
	07, 09, 10	Worksite
Parish of Barham	01, 08, 11, 12, 13, 14	Creation of public right of way
	06	Access for removal of level crossing
	03, 05, 09	Worksite
District of Babergh Parish of Wherstead	04	Access for removal of level crossing and creation of public right of way
	03, 05, 06, 11, 12	Creation of public right of way
	07, 09	Footbridge
	10, 13, 15	Worksite
	16	Access for removal of crossing
Parish of Bentley	06	Creation of public right of way
	08, 17	Creation of public right of way and access for removal of level crossing
	09, 13, 15	Worksite
	11, 12	Access for removal of level crossing
	16	Access for removal of level crossing and creation of public right of way
Parish of Brantham	06	Creation of public right of way and access for removal of level crossing
	02	Access for removal of level crossing and worksite
	03, 04, 10, 12, 20, 22, 24A, 29, 32	Worksite
	05, 09, 23, 24B,	Footbridge
	24, 24C, 31	Creation of public right of way
	25, 30	Access for removal of level crossing

SCHEDULE 6

Article 7

STREETS SUBJECT TO ALTERATION OF LAYOUT

(1) <i>Area</i>	(2) <i>Street subject to alteration of layout</i>	(3) <i>Description of alteration</i>
County of Suffolk District of Forest Heath Parish of Higham	Coalpit Lane	New footway
District of Mid Suffolk Parish of Bacton	Pound Hill	New footway

SCHEDULE 7

Article 8

STREETS SUBJECT TO STREET WORKS

(1) <i>Area</i>	(2) <i>Street subject to street works</i>
County of Suffolk District of Forest Heath Parish of Newmarket	Granary Road
Parish of Higham	A14 onslip westbound Higham Road
District of Mid Suffolk Parish of Thurston Parish of Weatherden	Barrell's Road Unnamed Road (on sheet 15)
District of Babergh Parish of Bentley	Church Road/Bentley Bridge
Parish of Brantham	A137
Parish of Wherstead	The Street

SCHEDULE 8

Article 9

STREETS TO BE TEMPORARILY STOPPED UP

(1) <i>Area</i>	(2) <i>Street to be stopped up</i>	(3) <i>Extent of temporary stopping up</i>
County of Suffolk District of Forest Heath Parish of Newmarket	Granary Road Path not on definitive map	Within Order limits Between points P001 and P002
Parish of Higham	Footpath 001 Higham A14 On Slip and A14 Off Slip (westbound) Higham Road Coalpit Lane	Between points P003, P004, P005 and P006 Between points T001, T002 and T003 Between points T002 and T006 Between points T004 and T005
District of St Edmundsbury Parish of Barrow	Footpath 006 Barrow Path not on definitive map Unnamed Road (on Sheet 8) Footpath 004 Higham	Between points P009 and P010 and within Order limits Between points P010, P011A and P011 Within Order limits Between points P009 and

		P010A
Parish of Great Barton	Footpath 017 Great Barton	Between points P018, P018A, P019A and P019
District of Mid Suffolk Parish of Thurston	Footpath 011 Thurston	Between points P029, P030A, P030, P033 and P032
	Footpath 005 Thurston	Between points P023 and P024 and between points P025 and P026
	Footpath not on definitive map	Between points P024 and P025
	Footpath not on definitive map	Between points P027, P028A, P028, P037 and P036
	Barrell's Road	Within Order limits
Parish of Elmswell	Footpath 012 Elmswell	Within Order limits
	Footpath 009 Elmswell	Between points P043 and P047
	Path not on definitive map	Between points P044 and P043
Parish of Wetherden	Footpath 035 Wetherden	Between points P048 and P049
	Path not on definitive map	Between points P051, P051A and P048
	Unnamed Road (on Sheet 15)	Within Order limits
Parish of Bacton	Footpath 014 Bacton	Between points P060, P060A, P061A and P061
	Path not on definitive map	Between points P062, P062A, P060B and P060
	Footpath 013 Bacton	Between points P063, P066 and P067
	Path not on definitive map	Between points P066, P068 and P069
	Pound Hill	Within Order Limits
Parish of Finningham	Bridleway 010 Finningham	Between points P074 and P075
Parish of Gilsingham	Footpath 026 Gilsingham	Between points P078, P079 and P080
	Footpath 022 Gilsingham	Between points P080, P081 and P082
	Path not on definitive map	Between points P078, P083 and P080 and between points P081 and P084
Parish of Mellis	BOAT 011 Mellis/Cow Pasture Lane	Within Order limits
Parish of Needham Market	Footpath 033 Needham	Within Order limits

	Market	
Parish of Barham	Footpath 012 Barham	Between points P093, P094, P095, P096 and P097 and between points P101 and P102
	Path not on definitive map	Between points P099 and P102
District of Ipswich	Footpath 018	Between points P103, P104 and P107
	Path not on definitive map	Between points P103, P108 and P109
District of Babergh Parish Wherstead	The Street	Within Order limits
Parish of Bentley	Footpath 018 Bentley	Between points P128, P128A, P130A and P130
	Path not on definitive map	Between points P129, P129A, P131A and P131
	Church Road/Bentley Bridge	Within Order limits
	Footpath 022 Bentley	Between points P136, P137, P138A, P138, P144, and P139
	Path not on definitive map	Between points P136, P136A and P137
	Path not on definitive map	Between points P138A, P138 and P144
Parish of Brantham	Footpath 006 Brantham	Between points P145, P146, P155A and P155
	Path not on definitive map	Between points P154, P146, P147A and P147
	A137	Within Order limits
	Footpath 013 Brantham	Between points P158, P157, P156, P159 and P160
	Rectory Lane/Bridleway 015 Brantham	Within Order limits
	Restricted Byway 014 Brantham	Within Order limits
	Footpath 012 Brantham	Within Order limits

SCHEDULE 9

Article 10

ACCESS TO WORKS

(1) <i>Area</i>	(2) <i>Description of Access</i>
County of Suffolk District of Mid Suffolk Parish of Finningham	Improved access to railway at northern end of Eastlands Lane

SCHEDULE 10

Articles 19 & 20

APPLICATION OF COMPULSORY PURCHASE LEGISLATION

Compulsory Purchase Act 1965 and compensation enactments

36. Part 1 of the 1965 Act, as applied by article 19 and the enactments relating to compensation for the compulsory purchase of land, apply to a compulsory acquisition of rights under article 21(1)—

- (a) with the modifications specified in paragraph (2), and
- (b) with such other modifications as may be necessary.

37.—(1) The modifications referred to in paragraph 1(a) are as follows.

(2) References in the 1965 Act to land are, in appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or
- (b) the land over which the right is, or is to be, exercisable.

(3) For section 7 of the 1965 Act substitute—

“7. Measure of compensation in case of purchase of new right

In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had, not only to the extent (if any) to which the value of the land over which the right is acquired is depreciated by the acquisition of the right, but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land)—

- section 9(4) (failure of owners to convey),
- paragraph 10(3) of Schedule 1 (owners under incapacity),
- paragraph 2(3) of Schedule 2 (absent and untraced owners), and
- paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be acquired compulsorily is vested absolutely in the acquiring authority.

(5) Section 11(a) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority have served notice to treat in respect of any right as well as the notice required by subsection (1) of that section (as it applies to a compulsory acquisition under article 19(1)),

(a) Section 11 was amended by section 34(1) of and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

they have power, exercisable in the same circumstances and subject to the same conditions, to enter for the purpose of exercising that right; and sections 12(a) (penalty for unauthorised entry) and 13(b) (refusal to give possession to acquiring authority) of that Act are modified accordingly.

(6) Section 20(c) (tenants at will) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition of the land, but taking into account only the extent (if any) of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over a house, building or factory.
2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.
4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—
 - (a) withdraw the notice to treat,
 - (b) accept the counter-notice, or
 - (c) refer the counter-notice to the Upper Tribunal.
6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).
7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.
8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

(a) Section 12 was amended by section 5692) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
(b) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).
(c) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right,
- (b) the use to be made of the right proposed to be acquired, and
- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner's interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the acquiring authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

(9) For section 5A(5A) of the 1961 Act (relevant valuation date), after “If” substitute—

- “(a) the acquiring authority enters on land for the purpose of exercising a right in pursuance with a notice of entry under section 11(1) of the 1965 Act,
- (b) the acquiring authority is subsequently required by a determination under paragraph 13 of Schedule 2A to the 1965 Act (as substituted by paragraph 2 of Schedule 10 to the Network Rail (Suffolk Level Crossing Reduction) Order 201[X] to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection 3(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”

(10) In section 5A(5B) of the Land Compensation Act 1961 (relevant valuation date), for paragraphs (a) and (b) substitute—

- “(a) a right over land is the subject of a general vesting declaration,
- (b) by virtue of paragraph 11(2) or 16(2) of Schedule A1 to the Compulsory Purchase (Vesting Declarations) Act 1981, the declaration has effect as if it included an interest in the land, and
- (c) the vesting date for the right is different from the vesting date for the interest in the land,”.

(11) In the Land Compensation Act 1973, for section 44 substitute—

“44. Compensation for injurious affection

(1) Where a right over land is acquired from any person for the purpose of works which are to be situated partly on that land and partly elsewhere, compensation for injurious affection of land retained by that person shall be assessed by reference to the whole of the works and not only the part situated on the land over which the right is exercisable.

(2) In this section, “compensation for injurious affection” means compensation for injurious affection under section 7 or 20 of the Compulsory Purchase Act 1965 as applied by paragraph 1 of Schedule 10 to the Network Rail (Suffolk Level Crossing Reduction) Order 201[X].”.

Compulsory purchase (Vesting Declarations) Act 1981 and compensation enactments

38.—(1) The 1981 Act, as applied by article 20(1), applies to a compulsory acquisition of a right under article 21 —

- (a) with the modifications specified in paragraph 4; and
- (b) with such other modifications as may be necessary.

(2) The enactments relating to compensation for the compulsory purchase of land also apply to a compulsory acquisition of a right under article 21.

39.—(1) The modifications referred to in paragraph 3(1)(a) are as follows.

(2) References in the 1981 Act to land are, in appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is, or is to be, exercisable.

(3) References in the 1981 Act to the 1965 Act are to be read as references to that Act as it applies to a compulsory acquisition of a right under article 21.

(4) Section 8(1) of the 1981 Act (vesting, and right to enter and take possession) is modified so as to secure—

- (a) that a general vesting declaration in respect of any right vests the right in the acquiring authority on the vesting date; and
- (b) that, as from the vesting date, the acquiring authority have power, exercisable in the same circumstances and subject to the same conditions, to enter land for the purpose of exercising that right as if the circumstances mentioned in section 8(1)(a) and (b) of the 1981 Act had arisen.

(5) Section 9(2) of the 1981 Act (right of entry under section 8(1) not exercisable in respect of land subject to certain tenancies, unless notice has been served on occupiers of the land) is modified so as to require a notice served by the appropriate authority under that provision to refer to the authority’s intention to enter land specified in the notice in order to exercise the right.

(6) In section 10(1) of the 1981 Act (acquiring authority’s liability on vesting of land), the reference to the acquiring authority’s taking possession of the land under section 11(1) of the 1965 Act is to be read instead as a reference to the authority’s exercising the power to enter the land under that provision as modified by paragraph 2(5) of this Schedule.

(7) Schedule A1 to the 1981 Act (counter-notice requiring purchase of land not in general vesting declaration) has effect as if—

- (a) in paragraph 1(1), for “part only of” there were substituted “only the acquisition of a right over”;
- (b) paragraph 1(2) were omitted;
- (c) references to the land proposed to be acquired were (subject to paragraph (e) below) to the right proposed to be acquired;
- (d) references to the additional land were to the house, building or factory over which the right is proposed to be exercisable;

- (e) in paragraphs 14 and 15, references to the severance of the land proposed to be acquired were to the acquisition of the right; and
- (f) in paragraph 15, after “in addition to” there were inserted “or in substitution for”.

SCHEDULE 11

Article 33

FOR THE PROTECTION OF DRAINAGE AUTHORITY

40.—(1) The following provisions of this Schedule apply for the protection of the drainage authority unless otherwise agreed in writing with Network Rail.

(2) In this Schedule—

“the Agency” means the Environment Agency;

“a category 1 specified work” means so much of any permanent or temporary work or operation authorised by this Order (which includes, for the avoidance of doubt, any dredging and any any geotechnical investigations that may be undertaken) as is likely to—

- (a) affect any drainage work which is or includes a main river or the volumetric rate of flow of water in or flowing to or from any main river;
- (b) affect the flow, purity or quality of water in any main river or other surface waters or ground water; or
- (c) affect the conservation, distribution or use of water resources.

“a category 2 specified work” means any of the following—

- (d) erecting any mill dam, weir or other like obstruction to the flow of any ordinary watercourse, or raising or otherwise altering any such obstruction;
- (e) erecting a culvert in any ordinary watercourse;
- (f) altering a culvert in a manner that would be likely to affect the flow of any ordinary watercourse; or
- (g) altering, removing or replacing a structure or feature designated by a local drainage authority under Schedule 1 to the Flood and Water Management Act 2010(a);

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” are construed accordingly;

“the drainage authority” means—

- (h) in relation to a category 1 specified work, the Agency;
- (i) in relation to a category 2 specified work, the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991(b).

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“the fishery” means any waters containing fish and the spawn, habitat or food of such fish;

“a main river” and “ordinary watercourse” have the meanings given by respectively the Water Resources Act 1991(c) and the Land Drainage Act 1991;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

(a) 2010 c. 29
 (b) 1991 c.59
 (c) 1991 c. 57

- (j) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (k) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (l) cause obstruction to the free passage of fish or damage to any fishery; or
- (m) affect the conservation, distribution or use of water resources;

41.—(1) Before beginning to construct any specified work, Network Rail must submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 51.

(3) Any approval of the drainage authority required under this paragraph—

- (a) must not be unreasonably withheld;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The drainage authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

42. Without limitation on the scope of paragraph 41, the requirements which the drainage authority may make under that paragraph include conditions requiring Network Rail at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

43.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 42, must be constructed—

- (a) Without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority is entitled to watch and inspect the construction of such works.

(2) Network Rail must give to the drainage authority not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Schedule, the drainage authority may by notice in writing require Network Rail at Network Rail's own expense to comply with the requirements of this Schedule or (if Network Rail so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5) and paragraph 47, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon Network Rail, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from Network Rail.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

44.—(1) Subject to sub-paragraph (5) Network Rail must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by Network Rail for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which Network Rail is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require Network Rail to repair and restore the work, or any part of such work, or (if Network Rail so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) Subject to paragraph 47, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on Network Rail, Network Rail has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from Network Rail.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Schedule.

45. Subject to paragraph 47, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by Network Rail to the reasonable satisfaction of the drainage authority and if Network Rail fails to do so, the drainage authority may make good the same and recover from Network Rail the expense reasonably incurred by it in so doing.

46.—(1) Network Rail must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the drainage authority has reason to expect that such damage may be caused, the drainage authority may serve notice on Network Rail requiring it to take such

steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 8, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the drainage authority of any damage or expected damage to a fishery, Network Rail fails to take such steps as are described in sub-paragraph (2), the drainage authority may take those steps and may recover from Network Rail the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 47, in any case where immediate action by the drainage authority is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the drainage authority may take such steps as are reasonable for the purpose, and may recover from Network Rail the reasonable cost of so doing provided that notice specifying those steps is served on Network Rail as soon as reasonably practicable after the drainage authority has taken, or commenced to take, the steps specified in the notice.

47. Nothing in paragraphs 43(4), 44(3), 45, 46(3) and (4) authorises the drainage authority to execute works on or affecting an operational railway forming part of Network Rail's network without the prior consent in writing of Network Rail such consent not to be unreasonably withheld or delayed.

48. Network Rail must indemnify the drainage authority in respect of all costs, charges and expenses which the drainage authority may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the drainage authority under this Schedule.

49.—(1) Without affecting the other provisions of this Schedule, Network Rail must indemnify the drainage authority from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised development or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands, or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of Network Rail, its contractors, agents or employees whilst engaged upon the work.

(2) The drainage authority must give to Network Rail reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of Network Rail which agreement must not be unreasonably withheld or delayed.

50. The fact that any work or thing has been executed or done by Network Rail in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve Network Rail from any liability under the provisions of this Schedule.

51. Any dispute arising between Network Rail and the drainage authority under this Schedule, if the parties agree, is to be determined by arbitration under article 35 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by Network Rail or the drainage authority, after notice in writing by one to the other.

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers powers on Network Rail to stop up or downgrade the level crossings specified in Schedule 2 and for the temporary use of land in connection with the construction and maintenance of public rights of way where these are provided to replace the crossings.

The Order authorises the construction of works in connection with the closure of the level crossings, the extinguishment of existing public and private rights of way and the creation of alternative rights of way.

A copy of the deposited plans and the book of reference referred to in the Order may be inspected at the offices of the Company Secretary and Solicitor to Network Rail Infrastructure Limited at 1 Eversholt Street, London, NW1 2DN.