

**TRANSPORT AND WORKS ACT 1992**

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

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**THE PROPOSED NETWORK RAIL  
(SUFFOLK LEVEL CROSSING REDUCTION) ORDER**

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**EXPLANATORY MEMORANDUM**

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#### THE PROPOSED NETWORK RAIL (SUFFOLK LEVEL CROSSING REDUCTION) ORDER

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#### EXPLANATORY MEMORANDUM

#### INTRODUCTION

This memorandum explains the purpose and effect of provisions in the draft Network Rail (Suffolk Level Crossing Reduction) Order (“the Order”) as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (S.I. 2006 No. 1466) (“the Applications Rules”).

Application for the Order has been made by Network Rail Infrastructure Limited (“Network Rail”). The purpose of this Order is to close or, in one case, to downgrade, a number of level crossings as a matter ancillary to a transport system and the works being undertaken relate to the closure of certain level crossings, redesignation of the status of certain footpaths, bridleways or byways open to all traffic and creation of new rights of way. The Order would permit Network Rail to occupy land temporarily and to acquire easements of other rights over land in connection with the construction of the scheduled and authorised works to be authorised by the Order.

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

#### PART 1

##### *Preliminary*

*Article 1* (*Citation and commencement*) provides for the commencement and citation of the Order.

*Article 2* (*Interpretation*) contains provisions for the interpretation of words and phrases used in the Order. Definitions additional to those set out in the model clauses have been included in this article to provide clarity, taking into account the specific provisions of the Order.

A new paragraph (5) explains that references to numbered plots are references to plot numbers on the deposited plans. This is intended to add clarity and has precedent in the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011 No. 1072) and Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780).

*Article 3* (*Application of the 1991 Act*) provides for the application of various provisions of the New Roads and Street Works Act 1991 (c. 22) to the temporary stopping up of streets under article 9 (*temporary stopping up of streets*) and the carrying out of works under article 8 (*power to execute street works*), even if no street works (within the meaning of the 1991 Act) are being carried out.

*Article 4* (*Disapplication of legislative provisions*) is not in the model clauses. Paragraph (1)(a) provides for the disapplication of a consent which would otherwise be required from the Environment Agency under the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016 No. 1154) to operate a regulated facility (in this case the carrying on of a

relevant flood risk activity) where necessary for the purposes of the authorised works. This has precedent in Schedule 21 to the High Speed Rail (London-West Midlands) Act 2017 (c.7). The provision in the 2016 Regulations has replaced the consenting requirement under section 109 of the Water Resources Act (which applied to proposals to erect, construct or carry out works to any structure in a watercourse which is part of a main river). In order to provide certainty that the project can proceed, the Order disappplies the requirements in Regulation 12(1)(a) for in-principle consent. Instead, the Order provides for approval of detailed plans of the works in the protective provisions for drainage authorities and the Environment Agency in Schedule 11. Disapplications of section 109 of the Water Resources Act have precedent in article 4 of the Network Rail (Ipswich Chord) Order 2012 (S.I. 2012 No. 284) and in Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780).

Paragraphs (1)(b) and (1)(c) provide for the disapplication of the requirements for additional consent from a relevant drainage authority in relation to works executed under the powers conferred by this Order under section 23 (prohibition on obstacles etc. in watercourses) of the Land Drainage Act 1991 and for approval under byelaws made or deemed to be made under section 66 of that Act. These are consents for activities which are a necessary part of the project. In order to provide certainty that the project can proceed, the Order disappplies the requirements for in-principle consent. Instead, the Order provides for approval of detailed plans of the works in the protective provisions for the drainage authorities in Schedule 11. There is ample precedent for this provision including, by way of example, article 6 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015/780).

Paragraph (1)(d) provides for the disapplication of any provisions in the forthcoming Neighbourhood Planning Act which would alter the arrangements and timescales required in relation to the service of notices for temporary occupation of land as set out in articles 22 and 23 of this Order.

## **PART 2 CROSSINGS**

*Article 5* (*Power to construct and maintain works*) authorises the construction and maintenance of the principal works proposed in the Order, which are described in Schedule 1 (*scheduled works*) and shown on the deposited plans and sections. The scheduled works must be constructed within the limits of deviation for those works. The purpose of this Order is to close a number of level crossings as a matter ancillary to a transport system and the works being undertaken relate to the closure of certain level crossings, redesignation of the status of certain footpaths, bridleways, or byways open to all traffic and creation of new rights of way. As the scheduled works in this Order will be footbridges, there are no works ancillary to these scheduled works. Article 5 therefore provides for the construction and maintenance of other authorised works which in the case of this Order are necessary or expedient for the purposes set out in paragraphs 3(a) to (c) and paragraph (4). In an extension to the model clause, paragraph (3) also includes (at paragraphs (d) to (h)) descriptions of works and categories of works which it is envisaged are likely to be necessary for the purposes described in sub-paragraphs (a) to (c).

The carrying out or maintenance of authorised works outside the limits of deviation may be done only on 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.

Network Rail may carry out and maintain (within the Order limits) landscaping and other works to mitigate the effect of construction, maintenance or operation of the authorised works and works for the benefit of land affected by the authorised works. Such provision is commonly included in Orders authorising railways, including the Network Rail (Thameslink

2000) Order 2006 (S.I. 2006 No. 3117) and Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780).

- Article 6* (*Power to deviate*) provides for limits within which Network Rail can deviate in the construction and maintenance of the scheduled works.
- Article 7* (*Power to alter layout etc. of streets*) is not found in the model clauses but permits Network Rail to alter the layout of streets in order to accommodate the authorised works, with the consent of the street authority (such consent not to be unreasonably withheld) or, in the case of alterations specified in Schedule 6 (*streets subject to alteration of layout*), without such consent. Alterations in street layout are required for a number of purposes set out in paragraph (2), including to create or increase the width of any footway or footpath or to reduce the width of the carriageway. A street authority which fails to notify Network Rail of its decision in respect of an application for consent within 28 days of the application being made is deemed to have given its consent. This provision for deemed consent avoids unnecessary delays to the authorised project. A similar time limit has been inserted in the approval processes elsewhere in this Order. This article has precedent in the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011 No. 1072) and Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780).
- Article 8* (*Power to execute street works*) authorises Network Rail to break up streets specified in Schedule 7 (*streets subject to street works*) and to carry out work in connection with the placing, maintaining or moving of apparatus.
- Article 9* (*Stopping up of footpaths*) authorises Network Rail to stop up the footpath over the Gooderhams crossing in the district of Mid Suffolk, parish of Bacton to the extent specified in the article. The level crossing itself will not be closed as existing private rights over it will be maintained. For this reason, the article does not follow clause 7 of the model clauses.
- Article 10* (*Temporary stopping up of streets*) provides for the temporary stopping up of streets. In an extension to the model clause, a new paragraph (2) confers a power on Network Rail to use any street temporarily stopped up under this article, which is within Order limits, as a temporary working site. Such provision has precedent in the Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010 No. 1721) and Network Rail (Ordsall Chord) Order 2015. Where the street is specified in Schedule 8 (streets to be temporarily stopped up), Network Rail is obliged merely to consult the relevant street authority. This is on the basis that such stoppings up will have already been considered in the application for this Order. If Network Rail wishes temporarily to stop up streets which are not specified in Schedule 8, paragraph (6)(b) provides that it requires the consent of the relevant street authority, which may attach reasonable conditions to any such consent but may not unreasonably withhold it. In an extension to the model clause, a time limit of 28 days is given, after which a street authority which fails to respond to an application for consent is deemed to have given its consent. This has precedent in recent TWA Orders including article 9 of the Network Rail (Nuneaton North Chord) Order 2010 and Network Rail (Ordsall Chord) Order 2015. The provision for deemed consent after 28 days avoids unnecessary delays to the authorised project.
- Article 11* (*Construction and maintenance of new or altered streets*) makes provision for new streets and street alterations or diversions to be completed to the reasonable satisfaction of the highway authority (or street authority in the case of alterations and diversions) and for their maintenance by Network Rail for a period of 12 months, and thereafter by the relevant authority. Paragraph (1), which is not in the model clauses, clarifies that this article applies to streets which are not a byway open to all traffic, bridleway or footpath because the creation of these is covered separately in article 16 (*creation and maintenance of new highway*). Paragraph 4 of this article excludes from its scope the structure of any bridge or tunnel carrying a street over or under Network Rail's railway as Network Rail will be responsible for maintaining the structure of any railway bridges or tunnels beyond the initial period of 12

months identified in this article. Paragraph (4) does not affect Network Rail's responsibility to maintain the surface of any highway under or over which the scheduled works are constructed, which will be governed by the provisions of paragraphs (1) and (2). This addition has precedent in the Network Rail (Hitchin (Cambridge Junction)) Order 2011 and Network Rail (Ordsall Chord) Order 2015.

*Article 12* (*Access to works*) gives Network Rail the power to provide or improve means of access at locations given in Schedule 9 (*access to works*). In addition, Network Rail may, with the approval of the highway authority, provide or improve means of access at any additional locations within the Order limits as Network Rail may reasonably require. For the reasons given above, an additional paragraph (2) has been inserted providing that if the highway authority does not respond within 28 days, it shall be deemed to have granted approval.

*Article 13* (*Highways subject to redesignation*) authorises Network Rail to alter the status of the highway at and adjacent to certain level crossings as identified in the columns in Schedule 3. The principle of altering the status of a highway in relation to a level crossing is preceded in article 2 of the Railtrack (Swinedyke Level Crossing) Order 1995 (S.I. 1995 No. 3188) and the article follows the precedent of article 9 of the Felixstowe Branch Line and Ipswich Yard Improvement Order 2008 (S.I. 2008 No. 2512) except that it incorporates the use of a schedule.

*Article 14* (*Closure of level crossings subject to opening of new rights of way*) is not found in the model clauses but contains provisions similar to those included, for instance, in article 16 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679) and in article 3 of the Network Rail (Seaham Level Crossing) Order 2013 (S.I. 2013 No. 533). Paragraph (1) authorises the permanent stopping up of the level crossings set out in column 2 of Part 1 of Schedule 2. Paragraph (1) provides that, upon the stopping up of the level crossings, the right of way over it will be extinguished to the extent set out in column (4). In place of the closed crossings, and the existing public right of way to be stopped up, new footpaths and bridleways will be created in the form and to the extent specified in column (5) of Part 1 of Schedule 2. Paragraph (3) provides that paragraphs (1) and (2) are not to come into effect until the new public right of way specified in column (5) has been opened for use as authorised by article 16 (*creation and maintenance of new highway*). Paragraph (4) entitles those who have suffered loss as a result of the extinguishment of a private right of way under paragraph (2) to claim compensation under Part 1 of the Land Compensation Act 1961<sup>1</sup>. Paragraph (5) provides that the article does not apply so as to extinguish the rights of statutory undertakers to maintain their apparatus.

*Article 15* (*Closure of level crossings*) authorises the permanent stopping up of the level crossings specified in Part 2 of Schedule 2 to the Order and the extinguishment of all rights over those crossings, including any public right of way. It is in identical form to article 14 (*closure of level crossings subject to opening of new rights of way*) save for the omission of paragraph (3). In these cases, it is not necessary to make the stopping up of the level crossings contingent on the completion of a right of way because there are other public rights of way with existing crossings over the railway nearby.

*Article 16* (*Creation and maintenance of new highway*) is adapted from the model provision (construction and maintenance of new or altered streets) and provides for the creation of new highway (eg footpaths and bridleways) in the form specified in column (5) of Part 1 of Schedule 2. The new highway must be completed to the reasonable satisfaction of the highway authority and will be maintained by Network Rail for a period of 12 months afterwards.

The Article provides for the application of s.28 (compensation for loss caused by public path

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<sup>1</sup> 1961 c.33.

creation order) of the Highways Act 1980 , subject to the modifications set out in paragraphs 5 to 7. This has precedent in article 16 (replacement and closure of footpath level crossings) of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679).

As the new public right of way must be completed to the reasonable satisfaction of the highway authority, paragraph (11) provides for deemed acceptance of the works by the highway authority should it fail to notify Network Rail of its decision within 28 days of receiving a request for confirmation that it is satisfied with the works. Provisions for deemed approval have precedent in a number of recent TWA Orders, including the Network Rail (Nuneaton North Chord) Order 2010 (SI 2010 No. 1721).

A new paragraph (12) provides for the new highways created under the article to extend over any footbridges provided as scheduled works in the Order.

### *Supplemental powers*

*Article 17 (Discharge of water)* enables Network Rail to discharge water into any watercourse, public sewer or drain, in connection with the construction, operation and maintenance of the authorised works with the approval and (if provided) superintendence of the person to whom it belongs (such approval may be subject to reasonable terms and conditions but must not be unreasonably withheld). The extension of this provision to cover operation is preceded in the recent Midland Metro (Wolverhampton City Centre Extension) Order 2016 (S.I. 2016 No. 684). The model clauses are extended so as to provide that any relevant person who fails to respond to an application for consent within 28 days of the application being made is deemed to have given consent. This has precedent in recent TWA Orders including the Network Rail (Nuneaton North Chord) Order 2010 (S.I. 2010 No. 1721) and Network Rail (Ordsall Chord) Order 2015. In paragraph (7) the wording of the model provision has been updated to refer to the environmental permitting regime introduced by the Environmental Permitting (England and Wales) Regulations 2016.<sup>2</sup>

*Article 18 (Power to survey and investigate land)* confers upon Network Rail power (upon notice to every owner and occupier of that land) to survey and investigate land within the Order limits and to make trial holes, carry out ecological or archaeological investigations and place on, leave on and remove apparatus. It includes provision for payment of compensation. Approval for the making of trial holes (which may not be unreasonably withheld) is, in the case of land located within the highway boundary, to be obtained from the highway authority, or, in the case of a private street, from the street authority. In a departure from the model clause a highway authority or street authority that fails to respond to an application for consent within 28 days of the application being made is deemed to have given consent. Such provision has precedent in the same context in article 15 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011 No. 1072) Network Rail (Ordsall Chord) Order 2015.

New paragraphs (3) to (8) are not in the model clauses but are adapted from the provisions recently enacted in and now in force under the Housing and Planning Act 2016 (c. 67) (sections 173 to 177) to allow for use of a warrant to enforce the powers in this article. This brings the surveying arrangements in relation to works authorised by Transport and Works Act Order in line with recent changes in the general law.

## **PART 3 ACQUISITION AND POSSESSION OF LAND**

### *Powers of acquisition*

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<sup>2</sup> SI 2016/1154

*Article 19* (*Application of Part 1 of the 1965 Act*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965 (c.56). This provision is altered from the model clause to reflect recent changes introduced by the Housing and Planning Act 2016 (c. 22). Paragraphs (4) and (5) reduce, in certain circumstances, the minimum notice periods required to be given in notices to treat whilst paragraph (7) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under articles 22 and 23 of this Order. These modifications have precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017.

*Article 20* (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981<sup>3</sup> and provides for that Act to have effect subject to certain modifications. It gives Network Rail the option to acquire land by this method rather than through the notice to treat procedure. This provision is altered from the model clause to omit sections 5A (time limit for the execution of a general vesting declaration) introduced by the Housing and Planning Act 2016 (c. 22). These amendments have precedent in Schedule 9 to the High Speed Rail (London – West Midlands) Act 2017.

*Article 21* (*Power to acquire new rights*) enables Network Rail to acquire easements or other rights over the land specified in column (1) of Schedule 4 (*land in which only new rights etc., may be acquired*) by creating them as well as by acquiring rights already in existence.

Paragraph (1) departs from the model clauses in providing that, in the case of the Order land specified in that Schedule, Network Rail's compulsory powers are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (2) of Schedule 4. In relation to such land the possibility of outright acquisition is not required.

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

Schedule 10 (*application of compulsory purchase legislation*), which is introduced by paragraph (3), modifies relevant enactments concerning compensation and compulsory powers in relation to such acquisitions of rights and reflects recent changes introduced by the Housing and Planning Act 2016 (c. 22).

#### *Temporary possession or use of land*

*Article 22* (*Temporary use of land for construction of works*) enables Network Rail, in connection with the carrying out of the authorised works, to take temporary possession of land listed in columns (1) and (2) of Schedule 5 (*land of which temporary possession may be taken*). The wording in paragraph 1 follows the more limited form reflecting the limited works required to be constructed under this Order.

The article departs from the model clause in allowing for works constructed under article 5 (*power to construct and maintain works*), and for mitigation works to be constructed and left on the land, without a requirement for these to be removed. This would apply, for example, to the newly laid out footpaths, bridleways and such like created under article 16 (*creation and maintenance of new highway*) where Network Rail does not need to retain a permanent interest or rights in the land.

*Article 23* (*Temporary use of land for maintenance of works*) empowers Network Rail to take temporary possession of any land within the Order limits for the purpose of maintaining the authorised

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<sup>3</sup> 1981 c. 66

works at any time within the period of one year beginning with the date on which the work in question is opened for use. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or occupied buildings.

#### *Compensation*

*Article 24 (Disregard of certain interests and improvements)* provides that in assessing the compensation payable in respect of compulsory acquisition, the Upper Tribunal shall disregard any interest in land or any enhancement of an interest in land caused by improvements which the Upper Tribunal is satisfied were created or undertaken with a view to obtaining compensation or increased compensation.

*Article 25 (Set-off for enhancement in value of retained land)* provides that in assessing the compensation payable in respect of compulsory acquisition, the Upper Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of the construction of the authorised works.

#### *Supplementary*

*Article 26 (Extinction or suspension of private rights of way)* provides for the suspension of private rights of way in respect of land temporarily occupied by Network Rail and for payment of compensation. The model clause is extended so as to apply to private rights of way over land subject to the compulsory acquisition of rights under this Order. In such circumstances, the private rights are extinguished only insofar as they are incompatible with the exercise of the right. This has precedent in, for example, paragraph 2 of Schedule 15 to the High Speed Rail (London – West Midlands Act 2017).

In a further departure from the model clause, paragraph (3) provides for Network Rail to exclude the application of any or all of the provisions of this article to any particular right of way and to enter into agreements making contrary provision. Such provision has precedent in article 40 of the Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005 No. 120) and the Network Rail (Ordsall Chord) Order 2015 and is useful for purposes of flexibility. That precedent has been adapted so that restrictions on powers to extinguish or suspend private rights of way in agreements are only effective if made in contemplation of this article.

*Article 27 (Time limit for exercise of powers of acquisition)* imposes a time limit of five years from the coming into force of this Order for the exercise of powers of compulsory acquisition of land.

### **PART 4 TRAFFIC SIGNS**

*Article 28 (Traffic signs)* would enable Network Rail to place and maintain traffic signs in connection with the construction of the authorised works.

### **PART 5 MISCELLANEOUS AND GENERAL**



- Article 29* (*Power to lop trees overhanging the authorised works*) enables Network Rail to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised works (or any apparatus used on the authorised works) and danger to passengers or persons using the authorised works. Provision is included for the payment of compensation.
- Article 30* (*Obstruction of construction of authorised works*) makes it a criminal offence without reasonable cause to obstruct the construction of the authorised works and to interfere with Network Rail's apparatus.
- Article 31* (*Certification of plans, etc*) requires Network Rail to submit copies of the book of reference and the deposited plans and sections to the Secretary of State for certification as true copies following the making of the Order.
- Article 32* (*Service of notices*) makes provision as to the service of notices or other documents for the purposes of the order.
- Article 33* (*Protection of interests*) introduces Schedule 11 to the Order (*for the protection of drainage authority*) which contains detailed protection for specific bodies.
- Article 34* (*No double recovery*) prevents compensation being payable in respect of the same matter both under the Order and under any enactment, contract or other rule of law.
- Article 35* (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration.

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