

**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  
(ESSEX AND OTHERS LEVEL CROSSING REDUCTION) ORDER**

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**EXPLANATORY MEMORANDUM**

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#### EXPLANATORY MEMORANDUM

#### INTRODUCTION

This memorandum explains the purpose and effect of provisions in the draft Network Rail (Essex and Others 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 downgrade a number of level crossings as a matter ancillary to a transport system. In relation to these closures or downgrades the Order authorises the carrying out of works including the removal of the crossings and the diversion or redesignation of the status of certain public roads, footpaths, bridleways, restricted byways or byways open to all traffic and the creation of new rights of way. The Order also authorises the construction of footbridges to carry new public rights of way over drains or watercourses. The Order would permit Network Rail to acquire land and interests in 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 land 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 an additional consent which would otherwise be required from the Environment Agency under the Environmental Permitting (England and Wales)

Regulations 2016 (S.I. 2016 No. 1154) for a consent 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 is preceded in the High Speed Rail (London-West Midlands) Act 2017 (c. 7) in Schedule 21. This provision has replaced the consenting requirement under section 109 of the Water Resources Act to erect, construct or carry out works to any structure in a water course which is part of a main river. In order to provide certainty therefore that the project can proceed, the Order disappplies the requirements for the 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 14 (*for the protection of Drainage Authorities and the Environment Agency*). Disapplications of section 109 of the Water Resources Act were preceded 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 (c) provide for the disapplication of additional consents which would otherwise be required from the drainage authorities under the Land Drainage Act 1991 (c.59). These are the requirements for consent to erect obstructions to the flow of an ordinary watercourse under section 23 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 therefore 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 14.

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 authorised in articles 22 and 23 of this Order.

Paragraph (2) provides for the disapplication or revocation of provisions contained in local Acts authorising a railway or Level Crossing Orders made under the Level Crossings Act 1983. The repeal of local legislation, where it is no longer appropriate and would be inconsistent with the purposes of the Order, has precedent in, for example, article 83 (repeals of the 1994 Act) of the Nottingham Express Transit System Order 2009 (SI 2009/1300).

## **PART 2 WORKS PROVISIONS**

### *Principal powers*

*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 or downgrade a number of level crossings as a matter ancillary to a transport system. The Order authorises the carrying out of works connected with the removal of the crossings and the diversion or redesignation of the status of certain public roads, footpaths, bridleways, restricted byways or byways open to all traffic and the creation of new rights of way. As the scheduled works in this Order are 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 (d) and paragraphs (4). In an extension to the model clause, paragraph (3) also includes 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 (d).

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 (*acquisition of land for authorised works*), land specified in columns (1) and (2) of Schedule 6 (*land in which only new rights etc. may be acquired*) for the purposes described in those Schedules or on land specified in columns (1) and (2) of Schedule 7 (*land of which temporary possession may be taken*) for the purpose 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.

### *Streets*

*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 8 (*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 in connection with a downgrade in status provided for in article 12 (*Highways subject to redesignation*). 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) 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 9 (*streets subject to street works*) and to carry out work in connection with the placing, maintaining or moving of apparatus.
- Article 9* (*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 10 (*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 10, paragraph (5)(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 10* (*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, restricted byway, bridleway or footpath because the creation of these is covered separately in article 15 (*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 11* (*Access to works*) gives Network Rail the power to provide or improve means of access at locations given in Schedule 11 (*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 12* (*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 4 (*redesignation of highways*). 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 13* (*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 and the existing

public rights of way set out in columns 2 and 3 of Part 1 in Schedule 2. In place of the closed crossings, and the existing public right of way to be stopped up, new footpaths, bridleways and other highways will be created in the form and to the extent specified in column (4) of Part 1 in Schedule 2. Paragraph (2) provides that, upon the stopping up of the level crossings, any right of way over it will be extinguished. Paragraph (3) provides that paragraphs (1) and (2) are not to come into effect until the new public right of way specified in column (4) of Part 1 in Schedule 2 has been opened for use as authorised by article 15 (*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 14 (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 13 (*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 15 (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, bridleways, byways open to all traffic) in the form specified in column (4) of Part 1 in 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 creation order) of 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 16 (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 precededented in the recent Midland Metro (Wolverhampton City Centre Extension) Order 2016 (S.I. 2016 No.

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

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 17 (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. 22) under 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*

*Article 18 (Power to acquire land)* confers on Network Rail powers of compulsory acquisition of land within the limits of deviation and identified on the deposited plans and described in the book of reference, for the purposes of the authorised works. It also authorises the compulsory acquisition of land specified in Schedule 5 (*acquisition of land for authorised works*) for the purpose specified in relation to that land in that Schedule.

*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

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

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

reflect recent changes introduced by the Housing and Planning Act 2016 (c. 22) and are preceded in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017.

*Article 21 (Power to acquire new rights)* Paragraph (1) enables Network Rail to acquire the rights for a third party by the creation of new rights over another third party's land as set out in Schedule 3 (*land in which private rights of access may be acquired*). Network Rail's compulsory powers are limited to the acquisition of the new rights for the purpose specified in relation to that land in column (2) of Schedule 3. In relation to such land the possibility of outright acquisition is not required. The land which has the benefit of the new right is shown cross-hatched on the plans accompanying the Order.

Paragraph (2) enables Network Rail to acquire new rights for its undertaking over the land set out in Schedule 6 (*land in which new rights may be acquired*). Network Rail's compulsory powers are limited to the acquisition of the new rights for the purpose specified in relation to that land in column (2) of Schedule 6. In relation to such land the possibility of outright acquisition is not required: under paragraph (3) Network Rail is not obliged to acquire a greater interest in the land.

Schedule 13 (*application of compulsory purchase legislation*), which is introduced by paragraph (4), 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). The modifications are preceded in Schedule 9 to the High Speed Rail (London – West Midlands) Act 2017.

#### *Temporary possession 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 7 (*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 15 (*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 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 extinguishment of private rights of way over land compulsorily acquired or in which rights are taken, and the suspension of private rights of way in respect of land temporarily occupied and for payment of compensation.

In a departure from the model clause, paragraph (7) 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 (Extinguishment of private rights over accommodation crossings)* is not in the model clauses. The purpose of the provision is to extinguish any existing private rights over the accommodation crossings which are closed without provision of any substitution as specified in paragraph (2). Under paragraph (3), the extinguishment of rights cannot occur until the works relating to those crossings have been completed. Provision is made in paragraph 4 for payment of compensation under Part 1 of the 1961 Act.

- Article 28 (Grant of rights over level crossings)* is not in the model clauses. The purpose of the provision is to grant rights of continued vehicular access to authorised users over those crossings specified in paragraph (2). Paragraph (3) provides that an authorised user will be a person to whom Network Rail issues a permit on written request and on such terms and conditions as Network Rail may reasonably specify.

- Article 29 (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 REGULATION**

- Article 30 (Traffic signs)* would enable Network Rail to place and maintain traffic signs in connection with the construction of the authorised works. This departs from the model clause by removal of references to tramways and tramcars and relates the purpose to works authorised in this Order.

- Article 31 (Traffic regulation)* would allow Network Rail, with the consent of the traffic authority, at any time prior to the opening of the authorised works for use to impose traffic regulation orders in relation to those works, including the speed restriction on the highway specified in paragraph (1) or, on any road as set out in paragraph (2) to:

(a) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles ;

- (b) make provision as to the direction of vehicular traffic;
- (c) permit or prohibit vehicular access;
- (d) make provision for vehicular speed limits;
- (e) make provision for parking places;
- (f) make provision for vehicular speed limits; and
- (g) revoke, amend or suspend in whole or in part any Traffic Regulation Order having effect which are inconsistent with any prohibition, restriction or other provision made by Network Rail under the Order.

The scope of the provisions are precededented in the recent Transport for Greater Manchester (Light Rapid Transit System) (Trafford Park Extension) Order 2016 (S.I. 2016 No. 1035) with the addition of the provision for parking spaces which appears in the model clause. As in the 2016 Order the article departs from the model clause by enabling Network Rail to permit the stopping, waiting, loading or unloading of vehicles and to permit vehicle access. Departing from the model clause, paragraphs (1) and (2) refer to orders under the 1984 Act rather than traffic regulation orders, so as to extend the provision to cover parking orders made under that Act.

Paragraph (4) follows the model clause in relation to consultation with the chief of police and the relevant traffic authority to be notified before exercise of the provisions in paragraphs (1) and (2). The remainder follows the Transport for Greater Manchester (Light Rapid Transit System) (Trafford Park Extension) Order 2016 (S.I. 2016 No. 1035) by including a specific provision to vary or revoke provisions made under the article. Following that precedent, paragraph (6) provides for provision in the Order to treat any designation of parking spaces to have effect as if made under section 45 of the Road Traffic Regulation Act 1984 and for any speed limits imposed to be treated as if made under section 84 of that Act. The provisions will enable Network Rail to make necessary changes to ensure the safety of users as a result of the creation of new rights of way.

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

- Article 32* (*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 33* (*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 34* (*Statutory undertakers etc.*) introduces Schedule 12 (*apparatus of statutory undertakers etc.*) to the Order which contains specific safeguards for statutory undertakers. Schedule 12 departs from the model clauses by omitting paragraphs (2) (apparatus and rights of statutory undertakers etc.) and (3) (railway and navigation undertakings) as these are not relevant in this Order.
- Article 35* (*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 36* (*Service of notices*) makes provision as to the service of notices or other documents for the purposes of the order.
- Article 37* (*Protection of interests*) introduces Schedule 14 (*for the protection of the Drainage Authorities and the Environment Agency*) to the Order which contains detailed protection for specific bodies.
- Article 38* (*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 39* (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration.

**TRANSPORT AND WORK ACT 1992**

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

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**THE PROPOSED NETWORK RAIL  
(ESSEX AND OTHERS LEVEL CROSSING REDUCTION) ORDER**

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**EXPLANATORY MEMORANDUM**

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