

TRANSPORT AND WORKS ACT 1992

THE NETWORK RAIL (ESSEX AND OTHERS LEVEL CROSSING REDUCTION) ORDER
("THE ORDER") INQUIRY 13.02.2019

NOTE ON FILLED-UP ORDER DATED 29.01.2019

1 Changes to Filled-Up Order dated 13.02.2019

- 1.1 This note explains the further amendments to the Order dated 13.02.2019 submitted to the inquiry on that date. These changes are in addition to those in the filled-up Order (FUO) submitted to the Inspector on 18.10.2017 (NR-101), on 2.10.2018 (NR-128) which were described in explanatory note (NR-127) and the filled up Order dated 29.1.19 (NR 170) and accompanying note (NR 169).

Further amendments arising as a result of discussions with landowners**1.2 Crossing E12 Wallaces**

As explained in NR 169 and at inquiry on Day 41 Network Rail has reached agreement with Audley End Estate on closure of crossing of E12 Wallaces privately, without the need to rely on powers in the Order. Network Rail has withdrawn the crossing from the Order, and the amendments to reflect that are:

- (a) Article 25(2): deletion of paragraph (b) entry for "Wallaces";
- (b) Schedule 5, deletion of the whole entry for the Parish of Wendens Ambo, and
- (c) Schedule 6, on the third page, deletion within the entry for Parish of Wendens Ambo, to "plots 4 and 6 Worksite".

The Inspector should therefore disregard sheet 20 of the Order plans.

Crossing E26 Barbara Close

- 1.3 As explained at inquiry on Day 44 the necessary works to the highway within Order limits at Ironwell Lane, District of Rochford and Parish of Hawkwell have already been undertaken. As a result Network Rail has removed the references to Ironwell Lane in Schedule 8 (Streets subject to Street Works) and Schedule 9 (Streets to be temporarily stopped up).

Other minor changes to the Order**1.4 Minor corrections have been made:**

- 1.4.1 In article 13(2), the cross-reference in the first to correctly refer to paragraphs (3) and (5)
- 1.4.2 Following discussion during the Order modifications session and in response to concerns raised initially by the Ramblers and supported by Essex County Council, Network Rail has amended the Order to include the additional wording in article 14 agreed between the parties and submitted in NR 186.

Winckworth Sherwood LLP

13.02.2019

18136/661/Note on filled Order dated 13.~ 4143-6710-7354 v.1.docx

STATUTORY INSTRUMENTS

201X No.

TRANSPORT AND WORKS, ENGLAND

TRANSPORT ENGLAND

The Network Rail (Essex and Others Level Crossing Reduction
Order 201X)

Made - - - -

Coming into force - -

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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 (Essex and Others 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);

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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

“the 1965 Act” means the Compulsory Purchase Act 1965 (a);
 “the 1980 Act” means the Highways Act 1980(b);
 “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(c);
 “the 1984 Act” means the Road Traffic Regulation Act 1984(d);
 “the 1990 Act” means the Town and Country Planning Act 1990 (e);
 “the 1991 Act” means the New Roads and Street Works Act 1991(f);
 “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(g);
 “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(h);
 “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 as the sections by the Secretary of State 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 meaning 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 registration number 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(i);
 “restricted byway” has the same meaning as in the 1980 Act;
 “the scheduled works” means the works specified in Schedule 1 (scheduled works) or any part of them;

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- (a) 1965 c. 56
 (b) 1980 c. 66
 (c) 1981 c.66
 (d) 1984 c.27
 (e) 1990 c. 8
 (f) 1991 c. 22
 (g) 1981 c.69
 (h) 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).
 (i) 1981 c. 67.

“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(a);

“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;

“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(b) (dual carriageways and roundabouts) of the 1980 Act.

(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 9 (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(c) referred to in paragraph (2) are—

- section 59(d) (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

(a) 2003 c. 21.

(b) 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).

(c) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18)

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

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
- (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 Neighbourhood Planning Act ^(c) in so far as it relates to temporary occupation of land under articles 21 and 22.

(2) On completion of the relevant authorised works—

- (a) Section 10 of the London, Tilbury and Southend Extension Railway Act 1852^(d) is disapplied as it relates to level crossings at:
 - (i) Ferry in the Borough of Castle Point, County of Essex;
 - (ii) Motorbike in the District of Basildon, County of Essex;
 - (iii) No. 131 in Thurrock;
 - (iv) Jefferies in Thurrock; and
 - (v) Howells Farm in Thurrock,

and

- (b) the Railtrack Long Green Level Crossing Order 1997;
- (c) the Network Rail Fullers End Level Crossing Order 2003;
- (d) the Network Rail Fullers End (Variation) Level Crossing Order 2005; and
- (e) the Network Rail Johnsons Level Crossing Order 2003,

are revoked.

(a) 5.1.2016/1154
(b) 1991 c.59
(c) 2017 c.xx
(d) 1852 c. lxxxiv

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 sections.

(3) Subject to paragraph (5), Network Rail may construct and maintain within the Order limits such works as are required—

- (a) to provide the public rights of way to the extent specified in column (4) of Part 1 of Schedule 2 (closure of level crossings);
- (b) in connection with the extinguishment of the rights of way specified in column (3) in Parts 1 and 2 of Schedule 2;
- (c) to provide the private rights of access to the extent specified in column (1) of Schedule 3 (land in which private rights of access may be acquired); and
- (d) in connection with the redesignation of highways specified in columns (3) and (4) and to the extent specified in column (2) of Schedule 4 (redesignation of highways);

including —

- (e) 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;
- (f) works or other operations, for the purposes of drainage and flood prevention, including embankments, including ground reprofiling and culverts;
- (g) works or other operations to level or stabilise the condition of any land, including ground reprofiling and embankments;
- (h) works to install or alter the position of apparatus, including mains, sewers, drains and cables;
- (i) works in the highway including provision of benches and handrails, provision of, alteration to or removal of lighting, bollards and other traffic restraint systems, signage and signalling and installation of road side equipment;

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 columns (1) and (2) of Schedule 5 (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 6 (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 7 (streets subject to alteration of layout) in the manner specified in relation to that street in column (3) of that Schedule.

(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 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;
- (c) reduce the width of the carriageway of the street; and
- (d) provide pedestrian refuges.

(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 8 (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.

Temporary stopping up of streets

9.—(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 9 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the deposited plans, 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

- 10.**—(1) This article applies to streets which are not a byway open to all traffic, restricted byway, bridleway or footpath.
- (2) 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.
- (3) Paragraph (2) does 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.
- (4) 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.
- (5) 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.

(6) 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

11.—(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 10 (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)(b), that highway authority is deemed to have granted approval.

Highways subject to redesignation

12.—(1) Subject to the provisions of this article, the highways specified in column (2) of Schedule 4 (redesignation of highways) shall, on completion of works, cease to be highways of the description specified on the definitive map and statement as specified in column (3) and are designated as highways as described in column (4) of Schedule 4.

(2) In each case 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 4.

(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

13.—(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 paragraphs (3) and (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 in Schedule 2; and
- (b) any public rights of way specified in column (3) 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 Part, the new highway specified in column (4) has been constructed and completed, to the extent

(a) 1981 c.69

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 15 (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

14.—(1) Subject to paragraphs (3), (4) and (5), 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 (3) of Part 2 of Schedule 2 are extinguished to the extent specified, by reference to the numbers and letters shown on the deposited plans.

(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.

(5) Paragraphs (1) and (2) are not to have effect until, in respect of:

- (a) High Elm crossing and
- (b) Bures crossing

listed in that Part of that Schedule, such alterations to existing highway authorised by this Order as agreed with the highway authority has been constructed and completed within Order limits to the reasonable satisfaction of the highway authority in accordance with article 15 (creation and maintenance of new highway) and is open for use.

Creation and maintenance of new highway

15.—(1) The new highways specified in column (4) of Part 1 in 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), and subject to article 29 (Traffic regulation), it is to have the legal status specified in column (4) of Part 1 in 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 (4) of Part 1 in 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 before the end of the period of 6 months beginning with the day on which the public right of way first becomes exercisable 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;
- (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

16.—(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).

(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).

(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(a).

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

Power to survey and investigate land

17.—(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);
- (b) may not use force unless a justice of the peace has issued a warrant under paragraph (4) authorising the person to do so; and

(a) S.I. 2016/1154.

(b) 1991 c.57.

- (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.
- (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

- 18.—**(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) Part 1 of the 1965 Act as so applied has effect with the following modifications.
- (3) Omit Section 4 (which provides a time limit for compulsory purchase of land).
- (4) In section 4A(1)(b) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4”, substitute “section 22 of the Transport and

(a) 1981 c.67

(b) As inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 27 (time limit for exercise of powers of acquisition) of the Network Rail (Essex and Others Level Crossing Reduction) Order 201[X].”

(5) 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”.

(6) In section 11A(a) (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.”.

(7) 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 (Essex and Others Level Crossing Reduction) Order 201[X](b)”.

(8) In Schedule 2A(c) (counter-notice requiring purchase of land not in notice to treat) —

- (a) omit paragraphs 1(2) and 14(2); and
- (b) after paragraph 29 insert —

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under articles 21 (temporary use of land for construction works) and 22 (temporary use of land for maintenance of works) of the Network Rail (Essex and Others Level Crossing Reduction) Order 201[X].”

Application of the 1981 Act

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

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

(3) In section 5 (earliest date for execution of declaration), in subsection (2), omit the words from “, and this subsection” to the end.

(4) Omit section 5A (time limit for general vesting declaration).

(5) In section 5B(d) (extension of time limit during challenge) for “section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A” substitute “section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 27 (time limit for exercise of powers of acquisition) of the Network Rail (Essex and Others Level Crossing Reduction) Order 201[X]”.

(6) In section 6(e) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to the Acquisition of Land Act 1981” substitute “section 14A of the Transport and Works Act 1992”.

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

(a) As inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).

(b) S.I. 201X/XXXX

(c) As inserted by paragraph 3 of Schedule 3 to the Housing and Planning Act 2016 (c. 22).

(d) As inserted by s.202(2) of the Housing and Planning Act 2016(c.22)

(e) As amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c.11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016 (c.22).

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

(9) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land under article 18 (application of Part 1 of the 1965 Act).

Power to acquire new rights

20.—(1) Network Rail may acquire compulsorily such rights of access or other easements specified in column (2) of Schedule 3 (Land in which private rights of access may be acquired) over the land specified in column (1) of that Schedule as may be required for the benefit of the land specified in column (2) of that Schedule on behalf of the owner of the land for the time being, by creating them as well as by acquiring rights of access or other easements already in existence.

(2) Network Rail may acquire compulsorily such easements or other rights over the land specified in column (2) of Schedule 5 (land in which only new rights may be acquired) as may be required for the purposes specified in column (3) of that Schedule, by creating them as well as by acquiring easements or other rights already in existence.

(3) Subject to—

- (a) Schedule 2A (counter-notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 12 (modification of compensation and compulsory purchasing enactments for creation of new rights); and
- (b) Schedule A1 (counter-notice requiring purchase of land not in general vesting declaration) to the 1981 Act (as modified by paragraph 7(7) of that Schedule);

where Network Rail acquires a right over land under paragraphs (1) or (2) Network Rail is not required to acquire a greater interest in that land.

(4) Schedule 12 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

21.—(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 6 (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—

- (a) replace a building removed in connection with the carrying out of the authorised works; or
- (b) restore the land on which any permanent works have been constructed under article 5 (power to construct and maintain works).

(a) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(b) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(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 36 (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

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

- (a) enter upon and take temporary possession of any land within the 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) as may be reasonably necessary for that purpose.

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

- (a) any house or garden belonging to a house; or
- (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 or 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 of 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 36 (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.

(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).

(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 land under this Order by virtue of article 18 (application of Part 1 of the 1965 Act).

(11) In this article “the maintenance period” in relation to an authorised work means the period of one year beginning with the date on which the work is opened for use.

Compensation

Disregard of certain interests and improvements

23.—(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.

Supplementary

Extinction or suspension of private rights of way

24.—(1) All private rights of way over land subject to compulsory acquisition under this Order are extinguished—

- (a) as from the date of acquisition of the land by Network Rail, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by Network Rail under section 11(1)(a) (powers of entry) of the 1965 Act,

whichever is the sooner.

(2) All private rights of way over land owned by Network Rail which, being within the Order limits, is required for the purposes of this Order are extinguished on the appropriation of the land for any of those purposes by Network Rail.

(3) Subject to the provisions of this article, 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—

- (a) as from the date of the acquisition of the right by Network Rail, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act,

whichever is the sooner.

(4) Subject to paragraph (6), 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 of the land.

(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) Measures 2006, sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307

(5) Any person who suffers loss by the extinguishment or 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.

(6) This article does not apply in relation to any right of way to which section 271 or 272(a) of the 1990 Act (extinguishment of rights of statutory undertakers etc.) applies.

(7) Paragraphs (1), (2), (3) and (4) have effect subject to—

(a) any notice given by Network Rail before—

(i) completion of the acquisition of;

(ii) Network Rail's appropriation of;

(iii) Network Rail's entry onto; or

(iv) 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.

(8) If any such agreement as is mentioned in sub-paragraph (7)(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.

Extinguishment of private rights over accommodation crossings

25.—(1) Subject to paragraphs (3) and (4) all private rights of way (if any) over the level crossings specified in paragraph (2) are extinguished.

(2) The level crossings referred to in paragraph (1) are—

(a) Ugley Lane crossing between points P097 and P098 in the Parish of Henham, District of Uttlesford, County of Essex;

(b) Fowlers crossing between points P056 and P057 in the Parish of Thorley, District of East Hertfordshire, County of Hertfordshire.

(3) Paragraph (1) must not take effect with respect to the extinguishment of the private rights of way by means of the level crossings specified in paragraph (2) until the authorised works relating to those crossings have been completed.

(4) Any person who suffers loss by the 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.

Grant of rights over level crossings

26.—(1) The level crossings specified in paragraph (2) are subject to continued rights of access for vehicular traffic for authorised users.

(2) The level crossings referred to in paragraph (1) are—

(a) Trinity Lane crossing between points R001 and R002 in the Borough of Broxbourne, County of Hertfordshire.

(b) Parsonage Lane crossing between points P147 and P148 in the Parish of Margaretting, City of Chelmsford, County of Essex; and

(a) Section 272 was amended by paragraphs 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(3) In this article, “authorised user” means any person to whom Network Rail grants a permit on written request to use any crossing referred to in paragraph (2) for such purposes or to access such land as may be specified in the permit on such terms and conditions as Network Rail may reasonably specify.

Time limit for exercise of powers of acquisition

27.—(1) After the end of the period of 5 years beginning on the day on which this Order comes into force—

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 18 (application of Part 1 of the 1965 Act); and
- (b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981^(a) as applied by article 19 (application of the 1981 Act).

(2) The powers conferred by article 20 (power to acquire new rights) and article 21 (temporary use of land for construction of works) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents Network Rail remaining in possession of land after the end of that period, if the land was entered and possession was taken before the end of that period.

PART 4

TRAFFIC REGULATION

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 on any street in connection with any instrument made under article 29 (traffic regulation) 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.

Traffic regulation

29.—(1) Subject to the provisions of this article and the consent of the traffic authority in whose area the road concerned is situated, such consent not to be unreasonably withheld, Network Rail may, in so far as may be necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance or operation of the authorised works—

(a) 1981 c. 66.

- (a) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (c) authorise the use as a parking place of any road;
- (d) make provision as to the direction or priority of vehicular traffic on any road;
- (e) make provision for vehicular speed limits on any road; and
- (f) permit or prohibit vehicular access to any road

either at all times or at times, on days or during such periods as may be specified by Network Rail.

(2) The powers conferred by paragraph (1) may be exercised at any time prior to the opening of the authorised works for use but subject to paragraph (5) any prohibition, restriction or other provision made under paragraph (1) may have effect both before and after the expiry of that period.

(3) Network Rail must consult the chief officer of police and the traffic authority in whose area the road is situated before complying with the provisions of paragraph (4).

(4) Network Rail must not exercise the powers conferred by paragraph (1) unless it has—

- (a) given not less than—
 - (i) 12 weeks' notice in writing of its intention to do so in the case of a permission, prohibition, restriction or other provision intended to have effect permanently; or
 - (ii) 4 weeks' notice in writing of its intention to do so in the case of a permission, prohibition, restriction or other provision intended to have effect temporarily,
 to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of Network Rail's intention in the case of subparagraph (a)(i), or within 7 days of its receipt of notice of Network Rail's intention in the case of sub-paragraph (a)(ii).

(5) Any prohibition, restriction or other provision made by Network Rail under paragraph (1)—

- (a) has effect as if duly made by, as the case may be—
 - (i) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act or, in the case of provision for vehicle speed limits, as an order under section 84(a) (speed limits on roads other than restricted roads) of that Act; or
 - (ii) the local authority in whose area the road is situated, as an order under section 32(b) (power of local authorities to provide parking places) or section 45(c) (designation of paying parking places on highways) of the 1984 Act,
 and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and
- (b) except in the case of provision for vehicle speed limits, is deemed to be a traffic order for the purposes of Schedule 7 (road traffic contraventions subject to civil enforcement) to the Traffic Management Act 2004(d).

(a) As amended by section 168(1) of, and paragraph 61 of Part 2 of Schedule 8 to, the 1991 Act; section 45 of the Road Traffic Act 1991 (c. 40) and section 1(6) of, and paragraphs 70 and 88 of Part 2 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

(b) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51). There are other amendments to section 32 that are not relevant to this Order.

(c) As amended by sections 8 and 102 of, and paragraph 4(19)(b) of Schedule 5 and Schedule 17 to, the Local Government Act 1985 (c. 51); section 1 of the Road Traffic Regulation (Parking) Act 1986 (c. 27); section 168(1) of, and paragraph 44 of Part 2 of Schedule 8 to, the 1991 Act and section 281 of, and Part 6 of Schedule 34 to, the Greater London Authority Act 1999 (s. 29). There are other amendments to section 45 that are not relevant to this Order.

(d) 2004 c.18

(6) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by Network Rail from time to time by subsequent exercise of the powers conferred by paragraph (1) within a period of 24 months from the opening of the authorised works for use.

(7) Before exercising the powers conferred by paragraph (1) Network Rail must consult such persons as it considers necessary and appropriate and must take into consideration any representations made to it by any such person.

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

(9) The powers conferred on Network Rail by this article with respect to any road have effect subject to any agreement entered into by Network Rail with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

PART 5

MISCELLANEOUS AND GENERAL

Power to lop trees overhanging the authorised works

30.—(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

31. 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.

Statutory undertakers, etc.

32. The provisions of Schedule 11 (apparatus and rights of statutory undertakers, etc.) have effect.

Certification of plans, etc.

33. 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

34.—(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.

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

Protection of interests

35. Schedule 13 (for the protection of Drainage Authorities and the Environment Agency) has effect.

(a) 1978 c. 30.

No double recovery

36. 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

37. 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

Article 5

SCHEDULED WORKS

In the County of Hertfordshire, District of East Hertfordshire

Parish of Sawbridgeworth

Work No. 1 — A footbridge, commencing at a point 15 metres south-west of the centre of Tednambury level crossing and terminating at a point 8 metres north-east of its commencement.

Parish of Thorley

Work No. 2 — A footbridge, commencing at a point 105 metres north-east of the centre of Fowlers Lane level crossing and terminating at a point 8 metres north-east of its commencement.

County of Essex, District of Uttlesford

Parish of Ugley

Work No. 3 — A footbridge, commencing at a point 360 metres south-west of the centre of Henham level crossing and terminating at a point 6 metres east of its commencement.

Borough of Colchester

Parish of Wivenhoe

Work No. 4 — A footbridge, commencing at a point 178 metres south-east of the junction of Queen's Road with the High Street and terminating at a point 5 metres east of its commencement.

Thurrock

Work No. 5 — A footbridge, commencing at a point 225 metres south-west of the bridge carrying The Manorway over the Grays to Pitsea railway and terminating at a point 3.5 metres north-east of its commencement.

SCHEDULE 2

Article 5

CLOSURE OF LEVEL CROSSINGS

PART 1 CLOSURE OF LEVEL CROSSINGS 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>Extent of highway to be extinguished</i>	<i>(4)</i> <i>Status and extent of new highway</i>
County of Hertfordshire Borough of Broxbourne	Cadmore Lane between points P001 and P002	Cadmore Lane between points P001, P002 and P007	Footpath between points P003, P004, P005, P006 and P007 Cycle track between points P003A, P003B, P004, P005, P005A, P006 and P007
County of Essex District of Harlow	Camps between points P023 and P024 Parndon Mill between points P030 and P031	Footpath EX/185/75 (Harlow) between points P021, P022, P023, P024, P025 and P026 Path not on definitive map between points P021, P028 and P023 Path not on definitive map between points P025 and P027 Footpath EX/185/73 (Harlow) between points P029, P030, P031 and P032 Path not on definitive map between points P029, P033 and P030	Footpath between points P014, P015, P016, P017, P018, P019 and P020 Footpath between points P029 and P034
County of Hertfordshire District of East Hertfordshire Parish of Sawbridgeworth	Tednambury between points P037 and P038	Footpath 003(Sawbridgeworth) between points P037, P038, P039, P039A and P040	Footpath between points P037, P042, P043, P044, P045, P046, P047 and P040

		Path not on definitive map between points P037, P041, P039 and P039A	
County of Hertfordshire District of East Hertfordshire Parish of Thorley	Pattens between points P049 and P050 and Gilston between points P059 and P060	Footpath 022 (Thorley) between points P048, P049, P050 and P051 Footpath 007 (Thorley) between points P058, P059, P060 and P060A Path not on definitive map between points P058, P061, P062 and P062A	Footpath between points P048, P052, P053 and P060A, between points P052 and P055 and between points P051, P054 and P053
Parish of Bishop's Stortford	Johnsons between points P064 and P065	Footpath 060 (Bishop's Stortford) between points P063, P064, P065, P066 and P067	Footpath between points P063, P068, P069, P070, P071, P066 and P072, between points P069 and P068A and between points P070 and P069A
County of Essex District of Uttlesford Parish of Elsenham	Fullers End between points P073 and P074	Footpath EX/13/29 (Elsenham) between points P079 and P080 Path not on definitive map between points P073 and P074 Path not on definitive map between points P082 and P079	Footpath between points P075, P076, P077, P078 and P079 and between points P080, P082 and P078
Parishes of Henham, Elsenham and Ugley	Elsenham Emergency Hut between points P084A and P084	Footpath EX/25/32 (Henham) between points P083, P084A, P084 and P085	Footpath between points P083, P088, P089, P090 and P091

		Footpath EX/51/24 (Ugley) between points P091 and P092	
		Footpath EX/25/7 (Henham) between points P092, P093 and P094 and between points P095 and P096	
Parishes of Ugley, Henham and Widdington	Henham between points P099 and P100	Footpath EX/55/26 (Widdington) between points P106, P099, P100, P101 and P102	Footpath between points P102 and P103 and between points P104, P104A and P105
Parish of Newport	Elephant between points P110 and P111	Footpath EX/41/14 (Newport) between points P109, P110, P111 and P112	Footpath between points P113, P114, P115 and P112
Parishes of Newport and Wendens Ambo	Windmills between points P127 and P128	Footpath EX/41/8 (Newport) between points P126, P127 and P128	Footpath between points P128, P130, P131 and P132
Parish of Littlebury	Littlebury Gate House between points P137 and P138	Footpath EX/31/30 (Littlebury) between points P137 and P138 Byway Open to All Traffic EX/31/3 (Littlebury) between points P138 and P138A	Footpath between points P141, P142, P143 and P138A Footpath between points P144 and P145
City of Chelmsford Parish of Margaretting	Maldon Road between points P152 and P152A	Footpath EX/226/21 (Margaretting) between points P150, P151, P152, P152A, P153 and P154	Bridleway between points P155 and P156
Parish of Boreham	Boreham between points P158 and P159 and Noakes between points P163 and P164	Bridleway EX/213/23 (Boreham) between points P158, P159 and P160 Footpath EX/213/24 (Boreham) between points P163, P164, P165 and P166 Path not on definitive map between points P163, P167, P165, P166 and P162	Bridleway between points P160, P161 and P162

		Dobbies Lane between points P222 and P223 and between points P224 and P225	P225, between points P222B and P223A and between points P225A and P225
Parishes of Eight Ash Green, Stanway and Copford	Church 2 between points P232 and P229	Footpath EX 149 29 (Stanway) between points P228, P229, P230 and P232 Footpath EX 132 11 (Eight Ash Green) between points P232, P233, P234 and P235	Footpath between points P228 and P231
Parishes of Wakes Colne and Mount Bures	Thornfield Wood between points P237 and P238 Golden Square between points P246 and P247	Footpath EX 152 11 (Wakes Colne) between points P236, P237, P238 and P239 Footpath EX 146 21 (Mount Bures) between points P245, P246 and P247 Footpath EX 152 8 (Wakes Colne) between points P247, P250 and P248 Footpath EX 152 7 (Wakes Colne) between points P251, P258 and P252	Footpath between points P236, P241 and P242 Footpath between points P239, P243 and P244 Footpath between points P248 and P249 Footpath between points P251 and P253 Footpath between points P253 and P254 Footpath between points P253, P255, P256 and P257

District of Tendring Parish of Ardleigh	Abbotts between points P267 and P268	Footpath 27 (Ardleigh) between points P265, P266, P267 and P268 Footpath 42 (Ardleigh) between points P268 and P273 Footpath 28 (Ardleigh) between points P268 and P274	Footpath between points P265, P269, P270, P266, P271 and P272 Footpath between points P273, P274 and P275
Parish of Wrabness	Wheatsheaf between points P279 and P280	Footpath EX 184 19 (Wrabness) between points P276, P277, P278, P279, P280, P281, P282 and P283 Path not on the definitive map between points P278, P287, P287A and P282	Footpath between points P276, P284 and P285
Borough of Colchester Parish of Wivenhoe	Paget between points P293 and P293A	Path not on definitive map between points P292, P293, P293A and P294	Footpath between points P292, P293 and P295
District of Tendring Parish of Great Bentley	Great Bentley Station between points P314 and P316 and Lords No. 1 between points P322 and P323	Footpath EX 165 8 (Great Bentley) between points P312, P313, P314, P315, P316 and P317 Path not on definitive map between points P313, P320 and P316 Footpath EX 165 12(Great Bentley) between points P321, P322, P323, P324 and P325	Footpath between points P317, P318 and P319
Parish of Frinton and Walton	Bluehouse between points P327 and P328	Footpath EX 164 16 (Frinton and Walton) between points P326, P327, P328, P329, P330 and P331	Footpath between points P326 and P332
Thurrock	No. 131 between points P335 and P336	Footpath 145 (Thurrock) between points P334, P335, P336 and P337 and between points P338 and P341	Footpath between points P339, P340 and P341

		Path not on definitive map between points P334, P342 and P335 and between points P336, P343 and P337	
London Borough of Havering and Thurrock	Eve's between points P346 and P347 and Manor Farm between points P358 and P359	<p>Footpath 252 (Havering) between points P344, P345, P346, P347 and P348</p> <p>Path not on definitive map between points P345, P356, P357 and P348</p> <p>Footpath 251 (Havering) between points P354, P358, P359 and P360</p> <p>Path not on definitive map between points P358, P365 and P360</p>	<p>Footpath between points P350, P351 and P352</p> <p>Footpath between points P352A and P353</p> <p>Footpath between points P354, P361 and P362</p> <p>Footpath between P363 and P364</p>
London Borough of Havering and County of Essex Borough of Brentwood	Whipps Farmers between points P378 and P379	<p>Footpath EX 272 178 (Havering) and Footpath EX 272 178 (Brentwood) between points P375, P376, P377, P377A and between points P378, P379 and P380</p> <p>Path not on definitive map between points P377A and P378</p>	Footpath between points P380 and P381A and between points P381, P382 and P383
County of Essex, Borough of Brentwood Parish of West Horndon and Thurrock	Brown and Tawse between points P386 and P391	<p>Footpath EX 313 39 (West Horndon) between points P391, P386 and P387</p> <p>Footpath 4 (Thurrock) between points P391 and P392</p>	<p>Footpath between points P387 and P388A</p> <p>Footpath between points P388, P389 and P390</p>

			Footpath between points P392 and P393
Thurrock	Jeffries between points P395 and P396	Footpath 32 (Thurrock) between points P394, P395, P396 and P397	Footpath between points P394, P398 and P399 Footpath between points P397, P401, P403, P404 and P405 Footpath between points P401 and P402
	Howells Farm between points P407 and P408	Footpath 23 (Thurrock) between points P406, P407, P408 and P409	Footpath between points P406, P413 and P414
County of Essex District of Basildon	Motorbike between points P416 and P417	Footpath EX 279 136 (Basildon) between points P415, P416, P417 and P418	Footpath between points P415, P419, P420 and P421
Borough of Castle Point	Ferry between points P427 and P428 and Brickyard Farm between points P430 and P431	Footpath EX BENF 22 (Castle Point) between points P426, P427, P428 and P424 Footpath EX BENF 12 (Castle Point) between points P429, P430 and P431	Footpath between points P425, P424 and P431
City of Chelmsford Parish of Rettendon	Battlesbridge between points P432 and P433	Footpath EX 229 23 (Rettendon) between points P432, P433 and P434	Footpath between points P432, P435, P436 and P437

		Footpath between P438, P439, P440 and P434
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PART 2 CLOSURE OF LEVEL CROSSINGS NOT SUBJECT TO OPENING OF NEW HIGHWAY

(1) Area	(2) Extent of level crossing to be stopped up and discontinued	(3) Extent of public right of way to be extinguished
County of Essex District of Epping Forest Parish of Roydon	Old Lane between points P011 and P012	Footpath EX/203/13(Roydon) between points P010, P011, P012 and P013
District of Uttlesford Parish of Newport	Dixies between point P121 and P122	Footpath EX 41 7 (Newport) between points P120, P121, P122 and P123
City of Chelmsford Parish of Margaretting	Parsonage Lane between points P147 and P148	Parsonage Lane between points P147 and P148 (subject to the use by vehicular traffic by persons authorised by Network Rail)
District of Braintree Parishes of White Notley and Cressing	Cranes No. 2 between points P181 and P182	Footpath EX 120 8 (White Notley) between points P179, P181, P182 and P183 Footpath EX 74 11 (Cressing) between points P183 and P184
Parish of Bures Hamlet	Bures between point P261 and P260	Footpath EX 70 30 (Bures Hamlet) between points P259, P260, P261 and P262
District of Tendring Parish of Harwich	Maria Street between points P288 and P289	Path not on definitive map between points P288 and P289
Parish of Alresford	High Elm between points P309 and P310	Footpath EX 157 4(Alresford) between points P308, P309, P310 and P311
London Borough of Havering	Butts Lane between points P367 and P368 Woodhall Crescent between points P372 and P373	Footpath 170 (Havering) between points P366, P367, P368 and P370 Footpath 172 between points P371, P372, P373 and P374
County of Essex District of Rochford Parish of Hawkwell	Barbara Close between points P441 and P442	Footpath EX 285 18 (Hawkwell) between points P441, P442 and P443

Borough of Southend-on-Sea	Woodgrange Close between points P449 and P450	Footpath 189 (Southend-on-Sea) between points P447, P448, P449, P450 and P451
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SCHEDULE 3

Article 5

LAND IN WHICH PRIVATE RIGHTS OF ACCESS MAY BE ACQUIRED

<i>(1)</i> <i>Extent of new private right of way</i>	<i>(2)</i> <i>Land having benefit of new right</i>	<i>(3)</i> <i>Purpose for which new private right may be acquired</i>
Over plot 32 in the Parish of Thorley on sheet 09	Land cross-hatched on sheet 09	Vehicular access
Between points P375 and P376 on sheet 57	Land cross-hatched on sheet 57	Vehicular access

SCHEDULE 4

Article 5

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 Hertfordshire Borough of Broxbourne	Trinity Lane between points R001, R002A and R002	Public Road	Bridleway (subject to use by vehicular traffic by persons authorised by Network Rail)
County of Essex District of Uttlesford Parish of Littlebury	Byway Open to All Traffic EX 31 3 (Littlebury) between points R005 and P138A	Byway Open to All Traffic	Footpath
City of Chelmsford Parish of Boreham	Footpath EX 213 24 (Boreham) between points R006 and P162	Footpath	Bridleway

SCHEDULE 5

Article 5

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 Hertfordshire District of East Hertfordshire Parish of Sawbridgeworth	04 18, 20	Access for creation of public right of way Access for removal of Level Crossing Access for construction of the authorised works Access for removal of Level Crossing
Parish of Thorley	01, 02, 04 06, 07, 18 10 32	Access for removal of Level Crossing Access for removal of Level Crossing Creation of public right of way Access for removal of Level Crossing Access for construction of the authorised works Access
County of Essex District of Epping Parish of Roydon	11, 12	Access for removal of Level Crossing
District of Harlow	10, 13, 14, 16, 19, 21, 25, 28, 29, 30, 31	Access for maintenance
District of Uttlesford Parish of Newport	33	Access for removal of Level Crossing
City of Chelmsford Parish of Margaretting	03, 07A	Access for removal of Level Crossing
Parish of Rettendon	02, 04A, 06, 07, 08	Access for removal of Level Crossing Access for creation of public right of way

Parish of Boreham	01, 02A, 02B, 12, 12A	Access for creation of public right of way Access for removal of Level Crossing
District of Braintree Parish of White Notley	05	Access for removal of Level Crossing
Parish of Rivenhall	06, 07	Access for creation of public right of way Access for removal of Level Crossing
	19,20	Access for removal of Level Crossing
Parish of Feering	16	Access for removal of Level Crossing
Borough of Colchester Parish of Eight Ash Green	01, 04, 05	Access for removal of Level Crossing
Parish of Stanway	08, 09, 10	Access for removal of Level Crossing
District of Tendring Parish of Ardleigh	01	Access for creation of public right of way Access for removal of Level Crossing
Parish of Alresford	13	Access for removal of Level Crossing
Parish of Great Bentley	06	Access for creation of public right of way Access for removal of Level Crossing
Borough of Brentwood Parish of West Horndon	09, 10, 11	Access for removal of Level Crossing
District of Basildon	08, 14, 15 19, 21	Access for removal of Level Crossing Access for creation of public right of way
District of Thurrock	24, 64, 86 69, 70, 71	Access for maintenance Access for removal of crossing and access for maintenance
London Borough of Havering	04, 04A, 05 09 38, 40	Access for maintenance Access for creation of public right of way Access
County of Essex Borough of Castle Point	25, 26, 27 28, 29, 30, 31	Access for removal of crossing Access for removal of

		crossing and access for maintenance
District of Rochford Parish of Hawkwell	02, 08	Access for removal of crossing
Borough of Southend-on-Sea	01, 02, 04, 05	Access for removal of crossing Access for maintenance

SCHEDULE 6

Article 5

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 Hertfordshire Borough of Broxbourne	01B	Creation of public right of way
District of East Hertfordshire Parish of Sawbridgeworth	01, 07, 08, 09, 13, 15	Worksite
	02	Access for creation of public right of way
	10, 24A	Footbridge
	14, 16, 23, 24, 24B, 25	Creation of public right of way
		Access for construction of the authorised works
Parish of Thorley	03, 13, 14, 17, 18A, 18B, 20, 22, 23, 27, 28, 31	Worksite
	22A, 24A	Footbridge
	29, 30	Access for creation of a public right of way
	08, 09, 11, 15, 16, 24, 25 32, 33 34	Creation of public right of way
County of Essex District of Epping Parish of Roydon	01, 02, 03, 04, 06, 07, 08, 09, 10	Worksite
District of Harlow	01, 02, 22	Worksite
	04, 05, 18, 21, 23, 24, 37, 38, 39, 40	Creation of public right of way

District of Uttlesford Parish of Elsenham	05, 06, , 12	Worksite and creation of public right of way
	01, 02, 03, 04, 13,	Creation of public right of way
	15, 16A	Worksite
Parish of Ugley	01, 02, 03	Access for removal of Level Crossing, access for creation of public right of way
	05, 07, 11, 15	Creation of public right of way
	09	Access for removal of Level Crossing
	12, 14	Footbridge
	13, 16, 17, 18, 19, 20, 21	Worksite
	10	Worksite and creation of public right of way
Parish of Henham	01	Access for removal of Level Crossing and creation of public right of way
	02, 19A, 20, 26A	Worksite
	07, 19	Access for removal of Level Crossing
	03, 08, 09, 10, 11, 14, 15, 16, 17, 18, 25, 26, 26B	Creation of public right of way
Parish of Widdington	01A, 01B, 04, 06	Worksite
	08	Worksite and creation of public right of way
Parish of Newport	01, 04, 09	Access for removal of Level Crossing
	10, 11, 13, 17, 20, 21, 23, 30, 31, 36	Worksite
	22, 28, 29, 35	Creation of public right of way and access for removal of Level Crossing
	37	Access for creation of public right of way Access for removal of level crossing

Parish of Wendens Ambo	01, 02	Access for creation of public right of way Access for removal of Level Crossing
Parish of Littlebury	01, 05, 06 03, 11 02, 04	Worksite Creation of public right of way Worksite and creation of public right of way
City of Chelmsford Parish of Margaretting	01, 02, 07, 08, 09, 11 06	Worksite Creation of public right of way
Parish of Rettendon	20, 21, 22 10, 15A, 17 16, 18 03, 04, 05, 12A	Worksite Worksite and creation of public right of way Creation of public right of way Access for creation of public right of way
Parish of Boreham	04, 15, 17 02	Worksite Creation of public right of way
District of Braintree Parish of Cressing	05, 09 08 13, 14, 14A, 15, 16 06, 06A, 07, 11, 12 19 24	Worksite Worksite and creation of public right of way Access for creation of public right of way and access for removal of Level Crossing Creation of PROW Access for removal of Level Crossing Access for removal of Level Crossing and creation of public right of way
Parish of White Notley	03, 21, 20 04, 05A, 21B, 21C 13, 14, 14A	Worksite Access for removal of Level Crossing Creation of public right of way

	22, 22A	Access for removal of Level Crossing and creation of public right of way
Parish of Rivenhall	03, 10, 10A, 16, 17, 18 04 05	Worksite Access for removal of Level Crossing Creation of public right of way
Parish of Kelvedon	01, 02, 05, 08, 09 03	Worksite Creation of public right of way
Parish of Feering	04, 07 01, 01A, 03, 05, 06, 09, 17, 21, 23, 24, 27 10, 11, 15	Worksite Creation of public right of way Access for removal of Level Crossing
Borough of Colchester Parish of Eight Ash Green	02	Worksite
Parish of Stanway	12, 13, 14, 15, 19	Creation of public right of way
Parish of Copford	07, 08, 09, 10, 11, 12, 14	Creation of public right of way
Parish of Mount Bures	01, 11 02, 05 06 12, 13	Creation of public right of way Worksite Access for removal of Level Crossing Access for creation of public right of way
Parish of Wakes Colne	01, 08, 16 03, 04, 05, 06, 09A 13, 15, 18, 20 09, 14	Worksite Creation of public right of way Access for removal of Level Crossing, access for creation of public right of way and creation of new public right of way
Parish of Wivenhoe	28, 33, 34 30 32, 35	Worksite Worksite and creation of public right of way Footbridge

District of Tendring Parish of Ardleigh	06, 11, 12, 17	Creation of public right of way
	09, 10, 14, 19	Worksite
	15, 18	Access for removal of Level Crossing
Parish of Wrabness	01, 02	Access for creation of public right of way and access for removal of Level Crossing
	03	Worksite
	04	Creation of public right of way and access for removal of level crossing
Parish of Alresford	08, 09, 10, 12, 14	Worksite
Parish of Great Bentley	27, 31, 32	Worksite
	04, 14, 15	Creation of public right of way
	13	Creation of public right of way
		Access for removal of Level Crossing
	11	Access for creation of public right of way
		Access for removal of Level Crossing
Parish of Frinton and Walton	01	Creation of public right of way and access for removal of Level Crossing
Borough of Brentwood	01, 02, 09, 10	Creation of public right of way
	03, 08, 15, 16, 18	Worksite
	11, 12, 13, 19	Access for removal of Level Crossing
Borough of Brentwood Parish of West Horndon	01, 08	Worksite
	02, 04, 06	Creation of public right of way
	05	Worksite and creation of public right of way
District of Basildon	01, 06, 10, 11, 12, 13, 18	Worksite
	03, 16, 17, 22	Creation of public right of way
	07, 09	Access for removal of crossing
Borough of Castle Point	02, 09	Creation of public right of way
	03, 10, 12, 13, 14, 15	Worksite

District of Rochford Parish of Hawkwell	01	Worksite
	04, 05, 06, 07	Worksite Access for removal of Level Crossing
Thurrock	04, 06, 07, 11, 13, 16, 24, 67, 86	Access for removal of Level Crossing
	12, 22A, 22B, 27, 38, 40, 41, 44, 45, 46, 47, 48, 50, 50A, 61A, 64, 74A, 76, 77, 83, 87	Worksite
	20, 22, 23, 53, 53A, 54, 59, 61, 63, 72, 74, 75, 78, 82, 84	Creation of public right of way
	26, 68	Access for removal of Level Crossing and creation of public right of way
	25, 26A	Worksite and creation of public right of way
	42, 43, 49	Footbridge
London Borough of Havering	51, 52	Creation of public right of way and access for construction of the authorised works
	04, 04A, 05, 33, 34, 38, 40	Access for removal of Level Crossing
Borough of Southend-on-Sea	06, 08, 35, 36, 37	Worksite
	01, 02, 11, 16	Creation of public right of way
	20, 26, 30, 36A	Worksite and access for removal of level crossing
	11, 12	Access for removal of level crossing

SCHEDULE 7

Article 7

STREETS SUBJECT TO ALTERATION OF LAYOUT

(1) Area	(2) Street subject to alteration of layout	(3) Description of alteration
County of Essex Borough of Colchester Parish of Wivenhoe	High Street Station Road Valley Road Paget Road	Alteration to footway Alteration to footway Alteration to footway Alteration to footway
District of Uttlesford Parish of Littlebury	Byway Open to All Traffic EX 31 3 (Littlebury)	Provision of gates and fencing
Parish of Elsenham	Old Mead Road	Creation of footway
District of Braintree Parish of Bures Hamlet	Station Hill Water Lane	Alteration to footway Alteration to footway

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to alteration of layout</i>	<i>(3)</i> <i>Description of alteration</i>
District of Tendring Parish of Alresford	Tenpenny Hill	Alteration to footway
District of Basildon	Pitsea Hall Lane	Alteration to footways

SCHEDULE 8

Article 8

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
County of Essex District of Uttlesford Parish of Newport	Debden Road
Parish of Elsenham	Old Mead Road
District of Braintree Parish of Bures Hamlet	Station Hill
Parish of Kelvedon	Sniveller's Lane
District of Tendring Parish of Harwich	Ferndale Road/Maria Street
Borough of Colchester Parish of Wivenhoe	Phillip Road Queens Road
District of Tendring Parish of Alresford	Tenpenny Hill
District of Basildon	Pitsea Hall Lane
London Borough of Havering County of Essex Borough of Brentwood	Ockendon Road Warley Street
City of Chelmsford Parish of Rettendon	A1245

SCHEDULE 9

Article 9

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
County of Hertfordshire District of East Hertfordshire Parish of Sawbridgeworth	Footpath 003(Sawbridgeworth) Path not on definitive map	Between points T001, P037, P038 and P039 Between points P037, P041, P039 and P039A
Parish of Thorley	Footpath 007 (Thorley) Path not on definitive map	Between points P058, P059, P060, and P060A Between points P058, P061, P062 and P062A
County of Essex	Footpath EX/13/29	Between points P079 and P080

District of Uttlesford Parish of Elsenham	(Elsenham) Path not on definitive map Old Mead Road	Between points P082 and P079 Within Order limits
Parishes of Ugley, Henham and Widdington	Footpath EX 55 26 (Widdington)	Between points P106, P099, P100, P101 and P102
Parish of Newport	Footpath EX 41 14 (Newport) Debden Road Footpath EX 41 8 (Newport)	Between points P109, P110, P111 and P112 Within Order limits Between points P126, P127, P128 and P129
Parish of Wendens Ambo	Rookery Lane	Between points T003 and T004
Parish of Littlebury	Footpath EX 31 30 (Littlebury) Byway Open to All Traffic EX 31 3 (Littlebury)	Between points P137 and P138 Entire length
City of Chelmsford Parish of Margaretting	Footpath EX 226 21 (Margaretting)	Between points P150, P151, P152, P152A, P153 and P154
Parish of Boreham	Bridleway EX 213 23 (Boreham) Footpath EX 213 24 (Boreham) Path not on definitive map	Between points P158, P159 and P160 Between points P163, P164, P166 and P162 Between points P163, P167, and P165
District of Braintree Parish of Cressing	Footpath EX 74 14 (Cressing) Path not on definitive map	Between points P169 and P170 and between points P171 and P172 Between points P170 and P171
Parishes of White Notley and Cressing	Footpath EX 120 13 (White Notley) Path not on definitive map Footpath EX 74 37 (Cressing)	Between points P179A, P181A, P182A, P183A and P184A Between points P183A and P184A Within Order limits
Parish of Rivenhall	Footpath EX 105 43 (Rivenhall) Footpath EX 105 45 (Rivenhall) Footpath EX 105 47 (Rivenhall)	Between points P192, P193, P194 and P195 Within Order limits Within Order limits
Parish of Kelvedon	Bridleway EX 92 34 (Kelvedon) Sniveller's Lane	Between points P200, P201, P202 and P203 Within Order limits
Parish of Feering	Footpath EX 78 7 (Feering) Path not on definitive map Byway Open to All Traffic BOAT EX 78 5 (Feering) Footpath EX 78 3 (Feering) Path not on definitive map	Between points P206, P206A, P207, P208 and P209 Between points P207 and P208 Within Order limits Between points P212, P213, P214 and P215 Between points P212, P220

		and P221
Borough of Colchester Parishes of Copford and Stanway	Footpath EX 149 29 (Stanway)	Between points P228, P229, P230 and P232
Parishes of Stanway and Eight Ash Green	Footpath EX 132 11 (Eight Ash Green)	Between points P232, P233, P234 and P235
Parish of Wakes Colne	Footpath EX 152 11 (Wakes Colne)	Within Order limits
	Footpath EX 152 12 (Wakes Colne)	Within Order limits
	Footpath EX 152 7 (Wakes Colne)	Between points P248, P251, P258 and P252
	Footpath EX 152 8 (Wakes Colne)	Between points P247, P250 and P248
Parish of Mount Bures	Footpath EX 146 21 (Mount Bures)	Between points P245, P246 and P247
District of Braintree Parish of Bures Hamlet	Station Hill	Within Order limits
	Water Lane The Paddocks	Within Order limits Within Order limits
District of Tendring Parish of Ardleigh	Footpath 27 (Ardleigh)	Between points P265, P266, P267 and P268
	Footpath 28 (Ardleigh)	Between points P268 and P274
	Footpath 42 (Ardleigh)	Within Order limits
Parish of Wrabness	Footpath EX 184 19 (Wrabness)	Between points T005, P276, P277, P278, P279, P280, P281, P282 and P283
	Path not on the definitive map	Between points P278, P287, P287A and P282
Parish of Harwich	Maria Street/Ferndale Road	Within Order limits
Borough of Colchester Parish of Wivenhoe	Path not on definitive map	Between points P292, P293 and P294
	Phillip Road	Within Order limits
	High Street	Within Order limits
	Station Road	Within Order limits
	Queens Road	Within Order limits
	Valley Road Paget Road	Within Order limits Within Order limits
District of Tendring Parish of Alresford		
	Tenpenny Hill	Within Order limits
Parish of Great Bentley	Footpath EX 165 8 (Great Bentley)	Between points P312, P313, P314, P315, P316 and P317
	Path not on definitive map	Between points P313, P320 and P316
	Footpath EX 165 12 (Great Bentley)	Between points P321, P322, P323, P324 and P325
Parish of Frinton and Walton	Footpath EX 164 16 (Frinton and Walton)	Within Order limits
Thurrock	Footpath 145 (Thurrock)	Between points P334, P335, P336 and P337 and between points P338 and P341
	Path not on definitive map	Between points P334, P342

	Footpath 4 (Thurrock) Footpath 32 (Thurrock) Footpath 23 (Thurrock)	and P335 and between points P336, P343 and P337 Between points P391 and P392 Between points P394, P395, P396 and P397 Between points P406, P407, P408 and P409
London Borough of Havering	Footpath 251 (Havering) Path not on the definitive map Ockendon Road Footpath EX 272 178	Between points P354, P358, P359 and P360 Between points P358, P365 and P360 Within Order limits Within Order limits
County of Essex Borough of Brentwood	Warley Street Footpath EX 272 178	Within Order limits Within Order limits
Borough of Brentwood Parish of West Horndon	Footpath EX 313 39 (West Horndon)	Between points P391, P386 and P387
District of Basildon	Footpath EX 279 136 (Basildon) Pitsea Hall Lane	Between points P415, P416, P417, P418 and T006 Within Order limits
Borough of Castle Point	Footpath EX BENF 22 (Castle Point) Footpath EX BENF 12 (Castle Point) Footpath EX BENF 31 (Castle Point)	Between points P426, P427, P428, P424 and T007 Between points P429, P430 and P431 Between points T002 and P429
City of Chelmsford Parish of Rettendon	Footpath EX 229 23 (Rettendon) A1245	Between points P432, P433 and P434 Within Order limits
District of Rochford Parishes of Rochford and Hawkwell	Footpath EX 285 21 (Hawkwell)	Within Order limits

SCHEDULE 10 ACCESS TO WORKS

Article 11

(1) <i>Area</i>	(2) <i>Description of Access</i>
County of Essex District of Harlow	Improved access off Roydon Road
District of Tendring Parish of Wrabness	Improved access off Wheatsheaf Lane
Parish of Harwich	Vehicular access
District of Basildon	Improved access off Pitsea Hall Lane

APPARATUS AND RIGHTS OF STATUTORY UNDERTAKERS ETC.

1. Sections 271 to 274(a) of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) apply in relation to any land acquired or appropriated by Network Rail under this Order subject to the following provisions of this paragraph; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282(b), which provide for the payment of compensation) have effect accordingly.

(1) In the provisions of the 1990 Act, as applied by sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State.

(2) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(3) Sub-paragraph (3) does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

(4) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which paragraph 2, or Part 3 of the 1991 Act, applies.

(5) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the 2003 Act; and

“public utility undertakers” has the same meaning as in the 1980 Act (c), and

“apparatus” has the same meaning as in Part 3 of the 1991 Act.

(a) Sections 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).
 (b) Section 279(3) was amended by paragraphs 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.
 (c) The definition of “public utility undertakers” was amended by section 190(3) of, and part 1 of Schedule 27 to, the Water Act 1989 (c. 15) and section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29).

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASING ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply, with the necessary modifications as respects compensation, in the case of a compulsory acquisition under this Order of a right by the creation of a new right, as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the following modification set out in sub-paragraph (2).

(2) For section 5A (5A) of the 1961 Act (relevant valuation date), substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purpose of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 12 to the Network Rail (Essex and Others Level Crossing Reduction) Order 201[X] (“the 201[X] Order”);
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 12 to the Network Rail (Essex and Others 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.”

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(a) has effect subject to the modifications set out in sub-paragraph (2).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for the words “land is acquired or taken” substitute “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” substitute “over which the right is exercisable”.

Application of Part 1 of the 1965 Act

4. Part 1 (compulsory purchase under Acquisition of Land Act 1946) of the 1965 Act, as applied by article 18, applies to a compulsory acquisition of rights under article 20(1) (power to acquire new rights)—

- (a) with the modifications specified in paragraph (5), and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(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

(a) 1973 c. 26.

(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 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 modified so 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 has served notice to treat in respect of any right as well as the notice required by subsection (1) of that section, it has power, exercisable in the same circumstances and subject to the same conditions, to enter for the purpose of exercising that right; and sections 11A(b) (powers of entry further notices of entry), 11B(c) (counter-notice requiring possession to be taken on a specified date), 12(d) (penalty for unauthorised entry) and 13(e) (entry on warrant in the event of obstruction) of that Act are modified accordingly.

(6) Section 20(f) (tenants at will etc.) 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 (as modified by article 18(7)) 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—

-
- (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.
- (b) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c.22).
- (c) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016 (c.22).
- (d) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).
- (e) 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).
- (f) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

“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 its 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 it must do so within the decision period.
8. If the authority does not serve notice of a decision within the decision period it is to be treated as if it had served notice of a decision to withdraw the notice to treat at the end of that period.
9. If the authority serve notice of a decision to accept the counter-notice, the Network Rail (Essex and Others Level Crossing Reduction) Order 201X 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 Network Rail (Essex and Others Level Crossing Reduction) Order 201X 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."

The 1981 Act and compensation enactments

6.—(1) The 1981 Act, as applied by article 19 applies to a compulsory acquisition of a right under article 20 (power to acquire new rights) —

- (a) with the modifications specified in paragraph 7; 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 20.

7.—(1) The modifications referred to in paragraph 6(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 20.

(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 5(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 13

Article 35

FOR THE PROTECTION OF DRAINAGE AUTHORITIES AND THE ENVIRONMENT AGENCY

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

(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 geotechnical investigations that may be undertaken) as consists of—

- (a) erecting any structure (whether temporary or permanent) in, over or under a main river if the work is likely to 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) the carrying out of any work of alteration or repair of any structure (whether temporary or permanent) in, over or under a main river if the work is likely to affect the flow of water in the main river or to affect any drainage work
- (c) erecting or altering any structure (whether temporary or permanent) designed to contain or divert the floodwaters of any part of a main river; or
- (d) any work or operation that is in, on, under, over or within 16 metres of a drainage work which is or includes a main river or is otherwise likely to affect any such drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work.

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

- (e) erecting any mill dam, weir or other like obstruction to the flow of any ordinary watercourse, or raising or otherwise altering any such obstruction;
- (f) erecting a culvert in any ordinary watercourse;
- (g) altering a culvert in a manner that would be likely to affect the flow of any ordinary watercourse; or
- (h) 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;

(a) 2010 c. 29

“the drainage authority” means—

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

“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 fish in such waters 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 and the Land Drainage Act 1991;

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

“specified work” means a category 1 specified work or a category 2 specified work

2.—(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 receipt 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 12.

(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 receipt 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, fishery, 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).

3. Without limitation on the scope of paragraph 2, 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, before or 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.

4.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 3, must be constructed—

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

(a) 1991 c. 59

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 completed.

(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 8, 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 an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

(6) If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, Network Rail must provide such alternative means of access to allow the Agency to maintain the flood defence or use the equipment no less effectively than before the obstruction.

5.—(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 sub-paragraph 5 and paragraph 8, 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 an 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 precluded 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.

6. Subject to paragraph 8, 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.

7.—(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 a fishery is caused, or the Agency 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 Agency 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 8, in any case where immediate action by the Agency 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 Agency has taken, or commenced to take, the steps specified in the notice.

8. Nothing in paragraphs 4(4), 5(3), 6, 7(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.

9. 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; and
- (b) in the inspection of the construction of the specified works or any protective works required by the drainage authority under this Schedule.

10.—(1) Without affecting the other provisions of this Schedule, Network Rail must indemnify the drainage authority from all claims, demands, proceedings, costs, charges, penalties, damages, expenses and losses, 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.

11. The fact that any work or thing has been executed or done by Network Rail in accordance with plans approved by the drainage authority, or to the drainage authority's 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.

12. 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 37 (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 close or downgrade the level crossings specified in Schedule 2 and for the permanent acquisition of and temporary use of land in connection with the construction of public rights of way and other works in the highway required in connection with the level crossing changes.

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 and other rights in land.

A copy of the deposited plans and the book of reference referred to in the Order may be inspected, on request, at the offices of Network Rail Infrastructure Limited at Network Rail National Records Centre, Unit 5, Audax Road, Clifton Moor, York YO30 4US.