

TRANSPORT AND WORKS ACT 1992

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

THE NETWORK RAIL (CAMBRIDGESHIRE SOUTH INFRASTRUCTURE ENHANCEMENTS) ORDER 202[X]

EXPLANATORY MEMORANDUM

Introduction

This Memorandum explains the purpose and effect of provisions in the draft Network Rail (Cambridgeshire South Infrastructure Enhancements) Order 202[X] (the **Order**) as required by Rule 10(2)(b) of the Transport and Works (Application and Objections Procedure) (England and Wales) Rule 2006 (S.I.2006 No.1466) (the **Applications Rules**).

Application for the Order has been made by Network Rail Infrastructure Limited (**Network Rail**). The Order would confer powers to authorise the construction of a new station and authorise the upgrade of railway known as the West Anglian Main Line. The Order also authorises the temporary acquisition, temporary use of land for the purpose of the works, permanent acquisition of land and acquisition of new rights for purposes with the works and other powers in connection with the construction and operation of the railway.

This Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I.2006 No.1954) (the Model Provisions). Where there is a material departure from the Model Clauses an explanation is provided.

Part 1***Preliminary***

Part 1 contains preliminary provisions

Article 1	<i>(Citation and commencements)</i> provides the citation and the coming into force of the Order.
Article 2	<p><i>(Interpretation)</i> contains provisions for the interpretation of words and phrases used in the Order. Definitions additional to those set out in the Model Clauses have been included in the Article to provide clarity, taking into account the specific provisions of the Order.</p> <p><i>(Paragraph 3)</i> explains that references to numbered plots are references to plot numbers on the land plans. This is intended to add clarity and has precedent in the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I.2011No.1072) and the Network Rail (East West Rail Bicester to Bedford Improvements) Order 2020 (S.I.2020 No.114).</p> <p>A new definition of authorised user has been included. This is to allow the specific user of private level crossings which are proposed to be closed pursuant to this Order to be provided with the use of an alternative access rather than the public. The alternative access is comprised in Works No. 11.</p> <p>An additional definition of "licensees" has been included and this has been necessary given access to the station will be via a private road (Francis Crick avenue and Robinson Way) for this reason any persons accessing the station</p>

	will need to be granted licence to pass and repass over the roads for the purposes of accessing the station.
Article 3	<i>(Incorporation of the railway clauses acts)</i> incorporates (subject to amendments), various provisions in the Railway Clauses Consolidation Act 1845 (C.20) and the Railway Clauses Consolidation Act 1863 (C.92). Reference is included to Section 16 of the Railway Clauses Consolidation Act 1845 in addition to those sections identified in the Model Clause. The Article omits those provisions referred to in the Model Clauses that are not relevant to this Order.
Article 4	<i>(Application of the 1991 Act)</i> provides the application of various provisions of the New Roads and Street Works Act 1991 (c.22) to the temporary stopping up of streets under Article 11 (<i>Temporary Stopping up of Streets</i>) and the carrying out of works under Article 10 (<i>Power to Execute Street Works</i>), even if no street works (within the meaning of the 1991 Act) are being carried out. It also dis-applies certain provisions of the 1991 Act which could impede the construction of the works. There is precedent for this in the Network Rail (Hope Valley Capacity) Order 2018 (S.I.2018 No.446) and the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I.2020 No.114).
Article 5	<p><i>(Disapplication of legislative provisions)</i> is not in the Model Clauses. Paragraph (a) provides for the disapplication of an additional consent which would otherwise be required from the Environment Agency under the Environmental Permitting (England and Wales) Regulations (S.I.2016 No.1154) for a consent to operate a regulated facility in relation to a flood risk activity. This is preceded in the High Speed Rail (London-West Midlands) Act 2017 (c.7) in Schedule 21 and in Network Rail East West Rail (Bicester to Bedford Improvements) Order 2020 (S.I.2020 No.114). This provision has replaced the consenting requirement under Section 109 of the Water Resources Act to erect construct or carry out works to any structure in a water course which is part of a main river. In order to provide certainty therefore the project can proceed, the Order to supply the requirements for the in principle consent. Instead the Order provides the approval of detailed plans of the works in the protective provisions for drainage authorities in part 3 of Schedule 12.</p> <p>Paragraph 1(b) and (e) provide for the additional consents which would otherwise be required from the drainage authorities under the Land Drainage Act 1991 (c.59). These are the requirements for consent to erect obstructions to the flow of an ordinary water course under section 23 of the Land Drainage Act 1991 and for the approval under bylaws made or deemed to be made under section 66 of that Act. These are consents for activities which are a necessary part of the project. In order to provide certainty therefore that the project can proceed the Order dis-applies the requirements for in-principle consent. Instead the Order provides for the approval of detailed plans of the work and the protective provisions for the drainage authorities in Schedule 12. There is ample precedent for this provision including in the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020.</p> <p>Paragraphs 1(c) and (d) provide for the disapplication of requirements to obtain approvals under the Flood and Water Management Act 2020 (c.29). This is preceded in Schedule 21, paragraphs 5 and 7 to the High Speed Rail (London-West Midlands) Act 2017. These are consents for matters which are covered in the protective provisions in the Order. Paragraph 1(c) removes the restrictions on removing designated features in relation to works authorised under the Order. Paragraph 1(d) dis-applies the requirement to provide approval for the drainage systems constructed under the powers of the Order. The requirement to obtain this consent is not required in relation to development</p>

	consent orders under the Planning Act 2008 (paragraph 7(3) Schedule 3, Flood and Water Management Act 2010).
--	--

Part 2

Works Provisions

Principle Powers

Article 6	<p><i>(Power to construct and maintain works)</i> authorises the construction and maintenance of the principle works proposed in the Order, which are described in Schedule 1 (<i>Scheduled Works</i>) and shown in the Deposited Plans and sections. The Scheduled Works must be constructed within the limits of deviation for those works.</p> <p>Article 6 also provides for the construction and maintenance of ancillary works necessary or expedient for the purposes of, or for the purposes ancillary to, the construction of the Scheduled Works which are described in general terms in paragraphs (3) and (4).</p> <p>In an extension to the Model Clause paragraph (3) includes descriptions of works and categories of works which it is envisaged are likely to be necessary or expedient for the purposes of, or for the purposes ancillary to, the construction of the Scheduled Works. Such variation to the Model Clause has precedent in the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020, the Network Rail (Ordsall Chord) Order 2015, the Crossrail (Plumstead Sidings) Order 2015 (S.I.2015 No.s781).</p> <p>The carrying out or maintenance of ancillary works outside the limits of deviation may be done only on land specified in columns (1) and (2) of Schedule 3 (land in which only new rights etc may be acquired) and land specified in columns (1) and (2) of Schedule 4 (land of which temporary possession may be taken).</p>
Article 7	<p><i>(Power to deviate)</i> provides for limits within which Network Rail can deviate in the construction and maintenance of the proposed works.</p>
Article 8	<p><i>(Level crossings to be stopped up)</i> this authorises the permanent stopping up of the private Level Crossings specified in Schedule 5 to the Order and extinguishment of all rights over those crossings. These are crossings are private crossings and Network Rail may only exercise the powers in relation to these crossings once it has provided the new substituted access (as identified in Schedule 5, comprised in Works 11). As identified in relation to Article 2, the Article allows for only those who currently have the benefits of rights to use the level crossings to also benefit from the new substituted access to be provided. Network Rail needs to acquire a right over third party land to facilitate use of the substituted access. It has been necessary to limit use of the new access in this way as it will not be a public access.</p>
Article 9	<p><i>(Power to alter layout etc. of streets)</i> this is not found in the Model Clauses but permits Network Rail to alter the layout of streets in order to accommodate the authorised works, with the consent of the street authority (such consent not to be unreasonably withheld or, in the case of alterations, specified in Schedule 6 without such consent. The street authority which fails to notify Network Rail of its decision in respect of an application for consent within 28 days of the application being made, is deemed to have given consent. This provision for deemed consent avoids unnecessary delays to the authorised project. A similar time limit has been inserted in the approval process as elsewhere in this Order.</p>

	The Article has precedent in the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No.114) and the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I.2011 No.1072).
Article 10	<i>(Power to execute street works)</i> authorises Network Rail to break up street specified in Schedule 7 to carry out works in connection with the placing, maintaining or moving or apparatus.
Article 11	<i>(Temporary stopping up of PROW and streets)</i> this provides for Network Rail to stop up temporarily the private right of way specified in Schedule 8. If Network Rail wishes to temporarily stop up streets which are not specified in Schedule 8 paragraph 5 provides that it requires the consent of the relevant street authority, which may attach reasonable conditions to any such consent but may not unreasonably withhold it. In an extension to the Model Clause the time limit of 28 days is given after which a street authority which fails to respond to an application for consent is deemed to have given its consent. This has precedent in the recent Orders of Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I.2020 No.114) and Network Rail (Ordsall Chord) Order 2015. The provision for deemed consent after 28 days avoids unnecessary delays to the authorised project.
Article 12	<i>(Construction and maintenance of new or altered highways)</i> makes provision for new streets and street alterations or diversions to be completed to the reasonable satisfaction of a highway authority (or street authority in the case of alterations and diversions) and the maintenance by Network Rail for a period of 12 months, and thereafter by the relevant authority.
Article 13	<i>(Access to works)</i> gives Network Rail the power to provide or improve means of access at the locations given in Schedule 9 (<i>Access to Works</i>). In addition Network Rail may, with the approval of the highway authority, provide or improve means of access at any additional locations within the Order limits as Network Rail may reasonable require. For the reasons given above an additional paragraph (2) has been inserted providing that if the highway authority does not respond within 28 days, it should be deemed to have been granted approval. This has precedent in the recent Orders of Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I.2020 No.114) and Network Rail (Ordsall Chord) Order 2015. The provision for deemed consent after 28 days avoids unnecessary delays to the authorised project.
Article 14	<i>(Use of private roads for construction)</i> allows Network Rail the ability to use any private road for purposes of construction and operation of the authorised works. This provision has precedent in the London Overground (Barking Riverside Extension) Order 2017. It has been extended to cover use of private roads for the operation of the authorised works. Francis Crick Avenue and Robinson Way are private roads; it is important that Network Rail and its authorised users are able to use the road for the purposes of accessing and egressing the station on both foot and by motor vehicle.
Article 15	<i>(Agreements with street authorities)</i> allows Network Rail to enter into agreements with street authorities regarding any street created or affected under the Order. These would allow Network Rail and the street authority to agree points such as who was responsible for undertaking certain works affecting streets under this Order, a time period for completion of the works and setting out the terms of any payment which may be made. The Model Clause is extended to include agreements relating to the strengthening improvement repair or construction of any street.
Article 16	<i>(Discharge of water)</i> enables Network Rail to discharge water into any water course, public sewer or drain, in connection with the construction, operation and

	<p>maintenance of the authorised works with the approval and (if provided) superintendence of the person to who it belongs (such approval may be subject to reasonable terms and conditions but must not be unreasonably withheld. The extension of this provision to cover operation, is precededented in the recent Midland Metro (Wolverhampton City Centre Extension) Order 2016 (S.I.2016No.684). The Model Clauses are extended so as to provide any relevant person who fails to respond to an application for consent within 28 days of the application being made, is deemed to have given consent. This has precedent in Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I.2020 No.114) and Network Rail (Ordsall Chord) Order 2015. In paragraph (7) the wording of the Model Provision has been updated to refer to the environmental permitting regime under the Environmental Permitting (England and Wales) Regulations 2016 (S.I.2516 No.1154).</p>
Article 17	<p><i>(Protective works to buildings)</i> permits Network Rail to carry out such protective works (as defined in paragraph (11) which has been expanded to clarify that the purposes of the protective works extends to protect apparatus or equipment in a building) to buildings within the area specified in the Article as it considers necessary expedient before, during and after construction of the authorised works (up to a period of five years after that part of the authorised project is first opened for use). This will allow Network Rail to carry out protective provisions that may be required as a result of the proposed works. Provision is made for surveys and notice, and for the payment of compensation.</p>
Article 18	<p><i>(Power to survey and investigate land)</i> confers upon Network Rail power (upon notice to every owner and occupier of that land) to survey and investigate land within the Order limits and to make trial holes, carry out ecological or archaeological investigations and place on, leave on and remove apparatus. It includes provision for payment of compensation. Approval for the making of trial holes (which may be unreasonably withheld) is, in the case of land located in the highway boundary, to be obtained from the highway authority, or, in the case of a private street, from the street authority. In a departure from the Model Clause the highway authority or street authority that fails to respond to an application for consent within 28 days of the application being made is deemed to have given consent. The article also includes the ability to make boreholes as well as trial holes as these may be required in order to confirm ground conditions. Such provision has precedent in the same context in the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I.2020 No.114) and Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I.2011 No.1072). New paragraphs 3-8 are not in the Model Clauses but are adapted from the provisions recently enacted and now enforced in the Housing and Planning Act 2016 (c.67) under Sections 173-177 to allow for use of a warrant to enforce the powers in this Article. This brings the surveying arrangements in relation to the works authorised by the Transport and Works Act Order in line with recent changes in the general law.</p>

Part 3

Acquisition and possession of land

Article 19	<p><i>(Power to acquire land)</i> confers on Network Rail powers of compulsory acquisition of land within the limits of deviation and identified on the Order Plans and identified in the Book of Reference (for the purposes of the authorised works or for any purposes that are ancillary to Network Rail's undertaken). It</p>
------------	--

	also authorises the compulsory acquisition of ancillary land specified in Schedule 2, which includes replacement open space land.
Article 20	<i>(Application of Part 1 of the 1965 Act)</i> applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965 (c.56). This provision is altered from the Model Clauses to reflect changes made to the 1965 Act by the Housing and Planning Act 2016 (c.22) as applied in the recent Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020.
Article 21	<p><i>(Application of the 1981 Act and 1961 Act)</i> this provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66) and provides for that Act to have affect subject to certain modifications. It gives Network Rail the option to acquire land by this method rather than through the Notices to Treat procedure. This provision is altered from the Model Clauses to reflect changes made to the Compulsory Purchase (Vesting Declarations) Act 1981 by the Housing and Planning Act 2016 (c.22) as applied in the recent Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020.</p> <p>A new paragraph (10) modifies the application of Part 1 of the Land Compensation Act 1961, so that where compensation disputes arise, in circumstances where land is not being acquired, (but for example temporary possession or interference with rights) then that dispute can also be referred to the Upper Tribunal for determination in accordance with part 1 of the 1961 Act.</p>
Article 22	<p><i>(Power to acquire rights)</i> authorises the creation of easements or other rights over land and makes ancillary provision where rights are required (2) confers, in relation to the land parcels listed in Schedule 3 limit powers to acquire only rights on that land, and paragraph (3) authorises such rights to be acquired on behalf of the owners of land affected by the exercise of the powers of the Order. The purpose of acquiring such rights on behalf of third parties is to maintain access to land which has been obstructed by the works. Paragraph (4) introduces Schedule 10 for the purpose of modifying legislation relating to compensation of the 1965 and 1981 Act so as to apply to the compulsory acquisition of new rights under this Order.</p> <p>There are consequential modifications which, as regards compensation legislation and the 1965 Act, have precedent in the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020. Modifications as regards to the 1981 Act are reflected in precedent in the High Speed Rail (London-West Midlands) Act 2017 (c.7) and followed in the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020. They provide clarification how the general vesting declaration process procedure is used in the acquisition of easements (which has not been clear in previous orders). The use of GVDs for such purposes is considered a desirable option for the purpose of speeding the process and ensuring consistency over different servient tenements of the terms of easement.</p> <p>Paragraph (6) is based on precedent found in the Network Rail (Ipswich Chord) Order 2012 (S.I.2012/2284). It provides for the acquisition of rights by statutory undertakers (rather than Network Rail) in circumstances where the relevant land is required for the diversion or relocation or their apparatus when the Secretary of State give consents. Such provisions are appropriate because the dominant tenement to be benefitted by such rights is a statutory undertaking of the undertaker rather than Network Rail's land and it is therefore necessary for the relevant statutory undertaker to acquire those rights.</p>

Article 23	<i>(Power to acquire sub-soil or air space only)</i> this is adapted from Model Clauses and enables Network Rail to acquire air space or sub-soil where it needs to do so rather than being obliged to acquire any greater interest in that land.
Article 24	<i>(Rights under or over streets)</i> this permits Network Rail to use the street within the Order limits without being required to acquire any part of the street or any easement right in the street. Provisions are made for the payment of compensation.
Article 25	<p><i>(Temporary use of land for construction works)</i> enables Network Rail in connection with the carrying out of the authorised works, to take temporary possession of the land listed in Schedule 4 (<i>land of which temporary possession may be taken</i>) and any other Order land which is subject to compulsory acquisition under the Order provided the compulsory acquisition process has not begun in relation to it. This is an extension of the Model Clauses but follows the approach of the number of TWA Orders including the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020. It allows greater flexibility in the event that following further detailed design of the works it is decided that only temporary occupation rather than permanent acquisition of land is required.</p> <p>This Article also departs from the Model Clauses in allowing (as well as temporary works) mitigations works which have been placed in that land to facilitate construction of the authorised works to be constructed and left on the land, without a requirement for these to be removed. This would apply for example, when mitigation is provided on behalf of a local flood authority but Network Rail does not need to retain a permanent interest or rights in the lands. The notice period for entry onto the land in paragraph (2) has been extended from 14 to 28 days.</p>
Article 26	<i>(Temporary use of land for maintenance works)</i> empowers Network Rail to take temporary possession of any land within the Order limits for the purposes of maintaining the new railway at any time within the period of five years beginning with the date on which the new railway is open for use. This power does not apply with respect to houses, gardens or occupied buildings or land required only for the purpose of access or the acquisition of rights over land.
Article 27	<i>(Temporary use of land for access)</i> authorises the use of land specified in Schedule 4 for the purposes of temporary access (rather than possession) in connection with the construction of the authorised works. Seven days' notice required to be given to the land owner unless access is urgently required. Again this is not in Model Clauses but the purpose of including a more limit power is to minimise blight to the land in question where outright acquisition, the acquisition of permanent rights or temporary possession of the land is not required. The provision has precedent in the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 and the Network Rail (Reading) (Land Acquisition) Order 2009 (S.I.2009No.2728).
Article 28	<i>(Disregard of certain interests and improvements)</i> provides that in assessing the compensation payable in respect of compulsory acquisition the Upper Tribunal will disregard any interest in land or any enhancement of an interest in land caused by improvements which they are satisfied were created or undertaken with a view to obtaining compensation or increased compensation.
Article 29	<i>(Extinction or suspension of private rights of way)</i> provides that the extinguishment of private rights of way of a land compulsorily acquired, and in the suspension of private rights of way in respect of land temporarily occupied and for payment of compensation. In an extension to the Model Clauses paragraph (6) of this Article specifically excludes from its application any rights

	of way to which a specific protective provisions in Schedule 12 (Provisions relating to statutory undertakers) apply.
Article 30	<i>(Time limit for exercise of powers of acquisition)</i> imposes a time limit of five years from the coming into force of this Order for the exercise of powers of compulsory acquisition of land and powers to take temporary possession of land under Article 25.

Part 4

Miscellaneous and general

Article 31	<i>(Power to transfer undertaking)</i> this would confer powers to transfer or lease the undertaking authorised by the Order. This would require the consent of the Secretary of State.
Article 32	<p><i>(Defence to proceedings in respect of statutory nuisance)</i> provides Network Rail with the defence to a claim in statutory nuisance brought under Section 82(1) of the Environmental Protection Act 1990 (c.43). If it can show that works are being carried out in accordance with a notice served under Section 60, or a consent given under Section 61 of the Control of Pollution Act 1974 (c.40), or that the nuisance complained of is a consequence of the operation of the works authorised by the Order and that it cannot reasonably be avoided. Although not one of the Model Clauses, this is a provision which has now become common see for example Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 and Network Rail (Ordsall Chord) Order 2010.</p> <p>Following paragraph (2) of Schedule 27 to the High Speed Rail (London-West Midlands) Act 2017, paragraph (3) extends this provision to provide a defence against abatement proceedings brought by a local authority under Section 80(4) of the 1990 Act.</p>
Article 33	<i>(Power to lop trees and overhanging the authorised works)</i> enables Network Rail to fell, lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised works (or any apparatus used on the authorised works) and danger to passengers or persons using the authorised works. Provision is included for the payment of compensation.
Article 34	<i>(Power to operate and use railway)</i> allows Network Rail to operate the railway.
Article 35	<p><i>(Planning permission and supplementary powers)</i> paragraph (1) ensures that the authorised works benefit from deemed planning permission pursuant to Section 90(2A) of the Town and Country Planning Act 1990.</p> <p>Paragraphs (2) and (3) of the Article deem permission to be given in relation to any works to be carried out to a tree which benefits from a Tree Preservation Order.</p>
Article 36	<i>(Public open space)</i> this Article requires Network Rail to acquire the replacement land to be provided in lieu of existing open space and ensure it is laid out to the satisfaction of the City Council before the authorised works are first brought into use. This Article has partial precedent from the Luton Dunstable Translink Order 2006 (S.I.2006 No.3118) and also is consistent with the Model Clause.

Article 37	<i>(Obstruction of a construction of authorised works)</i> makes it a criminal offence for a person, without a reasonable excuse, to obstruct without acting with proper authority to construct the works, or to interfere with apparatus belonging to such a person.
Article 38	<i>(Disclosure of confidential information)</i> makes it a criminal offence to disclose certain confidential information obtaining upon entry to certain premises under Article 217 (Protective works to building) or Article 18 (<i>Power to survey and investigate land</i>).
Article 39	<i>(Statutory undertakers)</i> introduces Schedule 12 to the Order (provisions relating to statutory undertakers etc) which contains specific safeguards for statutory undertakers with apparatus on land acquired under the Order.
Article 40	<i>(Certification of plans)</i> provides for Network Rail to submit to the Secretary of State for certification the Book of Reference and Land Plans after the making of this Order.
Article 41	<i>(Service of notices)</i> make provision as to the service of notices or other documents for the purposes of the Order.
Article 42	<i>(Protection of interests)</i> introduces Schedule 12 (<i>Protective provisions</i>) which contain detailed protection for specific bodies.
Article 43	<i>(No double recovery)</i> prevents compensation being payable in respect of the same matter both under the border and under any other enactments, contract or any other rule of law.
Article 44	<i>(Arbitration)</i> makes provisions for differences arising under any provision of this Order to be determined by arbitration.