

**TRANSPORT AND WORKS ACT 1992**

**Transport and Works (Applications and Objections  
Procedure) (England and Wales) Rules 2006**

**THE NETWORK RAIL (HUDDERSFIELD TO WESTTOWN  
(DEWSBURY) IMPROVEMENTS) ORDER**

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**DOCUMENT NR03: EXPLANATORY MEMORANDUM**

**Rule 10(2)(b)**

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**The Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order**

*Document NR03 - Explanatory Memorandum*

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**DEPARTMENT FOR TRANSPORT  
2021**

Rule 10(2)(b)

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**THE NETWORK RAIL (HUDDERSFIELD TO WESTTOWN (DEWSBURY)  
IMPROVEMENTS) ORDER**

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**Explanatory Memorandum**

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**Rule 10(2)(b)**

This memorandum explains the purpose and effect of each article and schedule in the draft Order, as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006 (S.I. 2006 No. 1466).

Application for the Order has been made by Network Rail Infrastructure Limited (“Network Rail”). The Order would confer powers for the construction, maintenance and operation of works on the Transpennine line between Huddersfield and Westtown (Dewsbury) for the purposes of increasing capacity and improving journey time and performance reliability of railway services on the Transpennine line both between Huddersfield and Westtown (Dewsbury) and between Manchester, Leeds and York.

The Order would authorise works to construct a new railway, including the upgrade and reconstruction of the existing railway, railway electrification works and associated works between Huddersfield and Westtown (Dewsbury). The Order also authorises the construction of station improvement works at Huddersfield and works for the construction or reconstruction of stations at Deighton, Mirfield and Ravensthorpe.

The Order authorises Network Rail to acquire land, the subsoil of land, interests in land, including the imposition of restrictive covenants and to temporarily acquire and temporarily use land for the purposes of the works authorised by the Order. The Order would also confer powers in connection with the construction and operation of the railway.

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

## PART 1

### PRELIMINARY

Part 1 contains preliminary provisions

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

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

Paragraph (2) departs from the model clauses by including reference to the imposition of restrictive covenants for the benefit of land which is acquired under this Order or otherwise comprised in Network Rail's undertaking. The power to impose restrictive covenants has precedent in, for example, the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780) and the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446).

A new paragraph (3) explains that references to numbered plots are references to plot numbers on the deposited plans. This has been added to provide clarity and has precedent in the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027), 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 3** (*Incorporation of the Railway Clauses Acts*) incorporates, subject to amendments, various provisions in the Railway Clauses Consolidation Act 1845 (c.20) and the Railways Clauses Act 1863 (c.92). The article omits those provisions referred to in the model clauses that are not relevant to this Order.

**Article 4** (*Application of the 1991 Act*) provides for the application of the New Roads and Street Works Act 1991 (c.22) to the temporary stopping up, temporary alteration or temporary diversion of streets under article 15 (*power to alter layout etc. of streets*) and article 16 (*temporary stopping up of streets*) and the carrying out of street works under article 13 (*power to execute street works*), even if no street works (within the meaning of the 1991 Act) are being carried out. Article 4(2) is not a model clause but is well precedented, for example see article 3 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 4 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 4 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114). The effect of the amendment is to increase the number of provisions contained in the New Road and Street Works Act 1991 which are not to have effect in relation to the powers exercisable under the terms of this Order.

**Article 5** (*Disapplication of legislative provisions*) is not in the model clauses. Paragraph (1)(a) provides for the disapplication of additional consents 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 provision has

replaced the consenting requirements under section 109 of the Water Resources Act 1991 (c.57) to erect, construct or carry out works to any structure in a watercourse which is part of a main river. In order to provide certainty therefore that the project can proceed in relation to works to be authorised by the Order in, over or adjacent to main rivers such as the construction of a new railway viaduct over the River Calder (forming part of Work No.15), the Order disappplies the requirements for in-principle consent. Instead the Order provides for the approval of detailed plans for the works in the protective provisions for the Environment Agency and drainage authorities in Part 3 and 4 of Schedule 19 (*protective provisions*). This approach to disapplication and the approval of details through protective provisions is precededented in article 5 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446), the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923) and the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114). This approach has also been accepted and adopted in Schedule 21 of both the High Speed Rail (London – West Midlands) Act 2017 (c.7) and the High Speed Rail (West Midlands – Crewe) Act 2021 (c.2).

Paragraphs (1)(b) and (e) provide for the disapplication of additional consents which would otherwise be required from the drainage authorities under the Land Drainage Act 1991 (c.59). Under section 23 of the Land Drainage Act 1991 there are requirements for the consent to erect obstructions to the flow of an ordinary watercourse and for approval under byelaws made or deemed to be made under section 66 of that Act. These are consents for activities in relation to ordinary watercourses such as improvements to drainage facilities which are a necessary part of the project. In order to provide certainty therefore that the project can proceed, the Order disappplies the requirements for in-principal consent. Instead the Order provides for the approval of detailed plans of the works in the protective provisions for the Environment Agency and drainage authorities in Parts 3 and 4 of Schedule 19 (*protective provisions*). These disapplications have precedent in article 5 of the Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017 No.1150), 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).

Paragraphs (1)(c) and (d) provide for the disapplication of requirements to obtain approvals under the Flood Management Act 2010 (c.29). These are consents for matters which are covered in the protective provisions provided in Parts 3 and 4 of Schedule 19 (*protective provisions*). Paragraph (1)(c) removes the restrictions on removing designated features in relation to works authorised under the Order. Paragraph (1)(d) disappplies 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 consent orders under the Planning Act 2008 (Paragraph 7(3), Schedule 3, Flood and Water Management Act 2010). These disapplications have precedent in article 5 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114). This approach to disapplication has also been accepted and adopted in Schedule 21 of both the High Speed Rail (London – West Midlands) Act 2017 (c.7) and the High Speed Rail (West Midlands – Crewe) Act 2021 (c.2).

Paragraph (3) provides for the disapplication of certain demolition controls under the Building Act 1984 (c.55) to demolitions carried out pursuant to the powers in the

Order. These are controls on demolition activities which are a necessary part of the project. This includes the demolition of existing buildings which are required to be demolished to enable the construction of new railway lines at Heaton Lodge (Work No.9B) and at Thornhill (Work No.15) and the construction of new railway works at Hillhouse (Works Nos. 2A and 2B). The delivery of these railway works form part of the core purpose of the works to be authorised by the Order. Therefore in order to provide certainty that the core purposes of the project can proceed and be delivered, the Order disapplies the requirements for further notice of demolitions authorised by the Order to be given to the local authority under section 80(2)(b) of the Building Act 1984. In addition, the Order disapplies the requirements for further details on the carrying out of demolitions authorised by the Order to be provided pursuant to sections 81 and 82 of the Building Act 1984. Instead the demolitions authorised by the Order, and the related request for deemed planning permission (see application document NR12), will be managed and controlled through the terms of the Code of Construction Practice for this project which is to mandated through a proposed planning condition to the request for deemed planning permission. This planning condition will also make provision for a demolition methodology statement for relevant buildings to be agreed with the local planning authority before any demolition works commence. Accordingly by virtue of such planning controls further controls are not required. The disapplication of these controls in the Building Act 1984 in relation to demolitions which are permitted under statutory authority is preceded in the High Speed Rail (West Midlands-Crewe) Act 2021 (c. 2) in paragraph 6 of Schedule 22.

**Article 6** (*Disapplication of legislative provisions relating to the surrender of an environmental permit*) is not in the model clauses. Regulation 25 of, and Part 1 of Schedule 5 to, the Environmental Permitting (England and Wales) Regulations 2016 (S.I 2016 No.1154) (“the Regulations”) make provision to regulate applications for the surrender of an environmental permit by an operator of a regulated facility (as defined by the Regulations). Such environmental permits do not run with the land on which the regulated facility is operated. Therefore, where land within the Order limits is compulsorily acquired by Network Rail under the powers to be conferred by this Order for the purposes of the construction and operation of the authorised works, any environmental permit relating to that land will remain with the original permit holder and the terms of such an environmental permit will continue to apply to the use of the land notwithstanding its acquisition by Network Rail for the purposes of the authorised works. Such an environmental permit can then only be surrendered under the Regulations by the original permit holder regardless of the compulsory transfer of the land to which the permit applies to Network Rail. In addition, whilst an existing environmental permit may be transferred to Network Rail (with the agreement of the existing permit holder and the Environment Agency) the Regulations do not contemplate the subsequent surrender by Network Rail of a permit transferred to Network Rail in the context of Network Rail using the land subject to the permit not for operation of a regulated facility but for the purposes of the authorised works.

The Order will authorise the construction and operation of new railway lines (Work No.15) and ancillary railway works required to support the electrification of the railway between Huddersfield and Westtown (Dewsbury) on land within the Order limits which is currently subject to the operation of existing environmental permits. These railway and electrification works form part of the core purpose of the works to be

authorised by the Order. Therefore in order to provide certainty that the core purposes of the project can proceed and be delivered provision is required in the Order to enable Network Rail to address the operation of such existing environmental permits in the context of the works authorised by the Order.

Therefore, Paragraph (1) disapplies the operation of Regulation 25 of, and Part 1 of Schedule 5 to, the Regulations in relation to an application made by Network Rail to the Environment Agency for the surrender of an environmental permit under Paragraph (2). Paragraph (2) replaces the disapplied provisions and authorises Network Rail, on application to the Environment Agency, to request the surrender of an environmental permit issued to the original permit holder or transferred to Network Rail by the Environment Agency under the Regulations for the operation of a regulated facility on the land specified in Paragraph (6).

In relation to such an application Paragraph (3) then replaces the disapplied provisions and instead provides for the Environmental Agency's acceptance of such an application to be subject to the requirement for Network Rail to obtain the approval of plans by the Environment Agency. The plans to be approved by the Environment Agency are for details of the measures for avoiding a pollution risk from the use of the site of the regulated facility for the authorised works or from its former operation as a regulated facility and for returning the site to a satisfactory state upon completion of the construction of the authorised works. In approving such plans Paragraph (4) provides for the Environment Agency to give such approval subject to such reasonable requirements as the Environment Agency may make for the avoidance of a pollution risk resulting from the construction of the authorised works on the site of the regulated facility or from the former use of the site as a regulated facility. These approval provisions being based on the management measures identified in Paragraph 14 of Part 1 of Schedule 5 to the Regulations for determining the surrender of environmental permit for a regulated facility.

Paragraph (5) then provides confirmation that the approval of these plans by the Environmental Agency overrides any requirement under the Regulations for any further environmental permit in consequence of the construction and operation of the authorised works on the site of the regulated facility subject of such an approval.

**Article 7** (*Application of local railway enactments*) is not in the model clauses. The purpose of Article 7 is to provide for the disapplication and repeal of certain provisions in the local railway legislation relating to original Huddersfield to Westtown (Dewsbury) railway that is subject to the operation of this Order.

Paragraph (1) makes provision for the disapplication of provisions in the local railway legislation relating to the construction and maintenance of bridges carrying public roads over or under the railway. These provisions are disapplied in relation to works executed under this Order so to enable such bridge works to be constructed and maintained in the manner prescribed by this Order (see Part 2 below and provisions regarding the construction of works) and in accordance with the requirements of this Order relating to the construction and maintenance of bridges carrying public roads over or under the railway (Articles 18 (*construction and maintenance of new or altered streets*) and 19 (*construction of bridges*)). Paragraph (1) also makes provision to disapply provisions in the local railway legislation relating to the construction and maintenance of bridges carrying the railway over canals and railway works affecting

canals. These provisions are also disapplied in relation to works executed under this Order so to enable such bridge and railway works to be constructed and maintained in the manner prescribed by this Order (see Part 2 below and provisions regarding the construction of works and Article 25). In addition the Order provides in Part 5 of Schedule 19 (*protective provisions*) protective provisions for the Canal and River Trust which include provisions protecting the operation of waterways managed by the Canal and River Trust which may be affected by the construction of works authorised by this Order or the operation of powers conferred by this Order.

Paragraph (2) makes provision for the repeal of provision in the London and North Western Railway (Wortley to Leeds, etc.) Act 1878 (41 Vict. c. ci) regarding the use of land so as to enable Network Rail to enter and use the land subject of this provision to construct the authorised works in accordance with the exercise of the acquisition provisions conferred by this Order.

Paragraphs (3) and (4) make provision for the repeal of provisions in the London and North Western Railway Act 1885 (48 & 49 Vict. c. lxxxviii) and the London and North Western Railway Act 1888 (51 & 52 Vict. c. clxxvi) regarding the construction and maintenance of roads and road bridges which are to be subject to street alteration works or bridge demolition and reconstruction works under this Order. Due to the nature of these works these provisions are to be repealed so to enable such street and bridge works to be constructed and maintained in the manner prescribed by this Order (see Part 2 below and provisions regarding the construction of works) and in accordance with the requirements of this Order relating to the stopping up of streets (Article 14), the alteration of the layout etc. of streets (Article 15) and the construction and maintenance of bridges carrying public roads over or under the railway (Articles 18 and 19).

The approach to such disapplications is precededented in TWA Orders such as the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006 No. 3117) and the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780).

## PART 2

### WORKS PROVISIONS

#### Principal Powers

**Article 8** (*Power to construct and maintain works*) authorises the construction and maintenance of the principal works proposed in the Order, which are described in Schedule 1 (*scheduled works*) to the Order and shown on the deposited plans and sections. The scheduled works must be constructed within the limits of deviation for those works.

Article 8(3) authorises the construction of the works described in column (3) of Schedule 2 (*acquisition of certain lands for ancillary works*) on the land described in columns (1) and (2) of that Schedule. Article 8(4) authorises the construction of the works described in column (3) of Schedule 10 (*acquisition of new rights and imposition of restrictive covenants only*) on the land described in columns (1) and (2) of that Schedule. Article 8(5) authorises the construction of works described in Article 30(4)(a) and (b) (*power to acquire ground anchor rights*) on the land described



in columns (1) and (2) of Schedule 13 (*power to acquire ground anchor rights*). Article 8(6) authorises the construction of the works described in column (3) of Schedule 14 (*acquisition of subsoil*) on the land described in columns (1) and (2) of that Schedule. Article 8(7) authorises the construction of works described in Article 32(2) (*power to acquire subsoil or airspace only*) on the land described in columns (1) and (2) of Schedule 15 (*land of which only subsoil may be acquired*).

Article 8 also provides for the construction and maintenance of works necessary or expedient for the purposes of the authorised works. These ancillary works are specified in Paragraph (8) and include, in an extension to the model clauses, descriptions of the types of works which it is envisaged are likely to be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works authorised by this Order. Such variation to the model clauses has precedent in article 5 of the Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005 No. 3105), in article 5 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027), article 7 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780), article 6 of the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923), article 6 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 6 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Article 8(10) provides that the carrying out or maintenance of works outside the limits of deviation may be done only on land which is specified in columns (1) and (2) of Schedule 2 (*acquisition of certain lands for ancillary works*), columns (1) and (2) of Schedule 10 (*acquisition of new rights and imposition of restrictive covenants only*), columns (1) and (2) of Schedule 14 (*acquisition of subsoil*) and columns (1) and (2) of Schedule 16 (*land of which temporary possession may be taken*) for the purposes specified in relation to that land in column (3) of each of these Schedules and on land specified in columns (1) and (2) of Schedule 13 (*power to acquire ground anchor rights*) and in columns (1) and (2) of Schedule 15 (*land of which only subsoil may be acquired*) for the purposes specified in relation to that land in articles 30(4)(a) and (b) and 32(2) respectively.

Article 8(11) provides that Network Rail may carry out and maintain (within the Order limits) landscaping and other works to mitigate the effect of the construction, maintenance or operation of the authorised works and works for the benefit or protection of land affected by the authorised works. Such provision is commonly included in Orders authorising railways, including article 5 of the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006 No. 3117) and article 6 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

**Article 9** (*Station works at Huddersfield*) specifically authorises Network Rail to carry out, alter and extend works at Huddersfield Station. The principal works (Work No.1C) are set out in Schedule 1 (*scheduled works*) to include the construction of a new section of railway through Huddersfield Station. Article 9 specifies in relation to the existing Huddersfield Station, the further works that are being authorised to be constructed. This article has precedent in Articles 7 to 9 of the Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005 No. 3105), Articles 7 and 9 of the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006 No. 3117) and Article 8 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044).

**Article 10** (*Station works at Deighton*) specifically authorises Network Rail to carry out, alter and extend works at Deighton Station. The principal works (Work No.5) are set out in Schedule 1 (*scheduled works*) to include the construction of a new section of railway through Deighton Station. Article 10 specifies in relation to the existing Deighton Station, the further works that are being authorised to be constructed. This article has precedent in Articles 7 to 9 of the Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005 No. 3105), Articles 7 and 9 of the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006 No. 3117) and Article 8 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044).

**Article 11** (*Station works at Mirfield*) specifically authorises Network Rail to carry out, alter and extend works at Mirfield Station. The principal works (Work No.14) are set out in Schedule 1 (*scheduled works*) to include the construction of a new section of railway through Mirfield Station. Article 11 specifies in relation to the existing Mirfield Station, the further works that are being authorised to be constructed. This article has precedent in Articles 7 to 9 of the Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005 No. 3105), Articles 7 and 9 of the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006 No. 3117) and Article 8 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044).

**Article 12** (*Power to deviate*) provides for limits within which Network Rail can deviate in the construction and maintenance of the proposed works.

### *Streets*

**Article 13** (*Power to execute street works*) confers authority on Network Rail to interfere with, and execute works in or under, the streets specified in Schedule 3 (*streets subject to street works*) within the Order limits for the purposes of the proposed works.

**Article 14** (*Stopping up of streets*) provides for Network Rail to permanently stop up the streets specified in Schedule 4 (*streets to be stopped up*). No street mentioned in Part 1 of Schedule 4 (*streets for which a substitute is to be provided*) is to be stopped up unless Network Rail has provided either the new street specified in Schedule 4 or a suitable temporary alternative route until the opening of the new street specified in Schedule 4. In accordance with the model clause, the streets specified in Part 2 of Schedule 4 (*streets for which no substitute is to be provided*) may only be stopped up if one of the conditions set out in Paragraph (4) has been met. Paragraph (5) provides for all rights of way along any street stopped up to be extinguished, and allows Network Rail to use the stopped up street for the purposes of its railway undertaking. Paragraph (6) provides for payment of compensation to any person suffering loss of any private right of way under this article.

**Article 15** (*Power to alter layout etc. of streets*) is not found in the model clauses but permits Network Rail to alter the layout of streets in order to accommodate the authorised works, with the consent of the street authority (such consent not to be unreasonably withheld) or, in the case of alterations specified in Schedule 5 (*streets subject to alteration of layout*), without such consent. Alterations in street layout are required for a number of purposes set out in Paragraph (2). A street authority which fails to notify Network Rail of its decision in respect of an application for consent within 28 days of the application being made is deemed to have given its consent.

This provision for deemed consent avoids unnecessary delays to the authorised project. A similar time limit has been inserted in the approvals processes elsewhere in this Order. This article has precedent in article 9 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780), article 8 of the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923) and article 11 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

**Article 16** (*Temporary stopping up of streets*) provides for the temporary stopping up of streets. In an extension to the model clauses, Paragraph (2) confers a power on Network Rail to use any street stopped up under the powers conferred by this article as a temporary working site. Such provision has precedent in the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446). Where the street is specified in Schedule 6 (*streets to be temporarily stopped up*), Network Rail is obliged to merely consult the relevant street authority. This is on the basis that such stoppings up will have been considered in the application for the Order. If Network Rail wishes to temporarily stop up streets which are not so specified in Schedule 6, Paragraph (5)(b) provides that Network Rail will need to obtain the consent of the relevant street authority, which may attach reasonable conditions to any such consent but may not unreasonably withhold consent. In an extension to the model clauses, a time limit of 28 days is given, after which a street authority which fails to respond to an application for consent is deemed to have given its consent or if it refuses consent without giving any grounds for its refusal it is deemed to have given its consent. The provision of such deemed consent avoids unnecessary delays to the authorised project. This has precedent in article 9 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 14 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

**Article 17** (*Access to works*) gives Network Rail the power to provide or improve means of access at locations shown on the deposited plans and given in Schedule 7 (*access to works*). In addition, Network Rail, may, with the approval of the highway authority (such approval not to be unreasonably withheld), provide or improve means of access at locations within the Order limits as Network Rail may reasonably require. For the reasons given above, in an extension to the model clauses an additional Paragraph (2) has been inserted providing that if a highway authority does not respond to an application for consent within 28 days of the application being made it is deemed to have given its consent. This has precedent in article 10 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027), article 10 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 16 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

**Article 18** (*Construction and maintenance of new or altered streets*) Paragraphs (1) and (2) make provision for new streets (subject to Paragraph (7)) and street alterations and diversions to be completed to the reasonable satisfaction of the highway authority (or street authority in the case of alterations and diversions) and for their maintenance by Network Rail for a period of 12 months, and thereafter the relevant authority.

Paragraph (3) (subject to Paragraph (4)) excludes from the scope of Paragraphs (1) and (2) the structure of any bridge or tunnel carrying a street over or under Network Rail's railway as Network Rail will be responsible for maintaining the structure of any such railway bridges or tunnels beyond the initial period of 12 months identified in

Paragraphs (1) and (2). In an extension to the model clause Paragraph (3) confirms that its application does not affect Network Rail's responsibility to maintain the surface of any highway under or over which the scheduled works are constructed, or the immediate approaches to any such highway, which instead will continue to be governed by the provisions of Paragraphs (1) and (2). This extension to the model clauses has precedent in article 12 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011 No. 1072) and article 13 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780).

Paragraph (4), which is not included in the model clauses, excludes from the scope of Paragraph (3) the structure of the new bridge comprised within Work No.7 which will provide for the existing Leeds Road (A62) bridge over the railway to be diverted on a new alignment over the railway. Paragraph (4) provides that the structure of the new bridge comprised within Work No.7 will be maintained by Network Rail for a period of 12 months, and thereafter by the highway authority. The exclusion of the new bridge comprised within Work No.7 from the scope of Paragraph (3) is to provide for the structure of the bridge comprised within Work No.7 to continue to be maintained by the highway authority who, in accordance with the "relevant agreement" (as defined by Article 2(1)), are the authority responsible for the maintenance of the existing bridge which carries the Leeds Road (A62) over the railway. Accordingly, after the initial maintenance by Network Rail for 12 months, the structure of the bridge comprised within Work No.7 will be maintained by the highway authority in accordance with the relevant agreement as applied to Work No.7 by Article 47 (*extension of maintenance obligations from the relevant agreement to Work No.7*). Paragraph (4) also confirms, in the same context as Paragraph (3), that except as provided by Paragraphs (1) and (2) Network Rail is not liable to maintain the surface of any highway forming part of the bridge comprised within Work No.7, or the immediate approaches to that highway.

As required by the model clauses Paragraph (7) identifies the new street which is intended to be a private street which is to be excepted from the operation of Paragraph (1). Paragraph (8) then specifies as required by the model clauses that this street is to be maintained by the street authority at the end of an initial 12 month maintenance period by Network Rail.

**Article 19** (*Construction of bridges*) provides for any bridges and tunnels for carrying a highway constructed or reconstructed under the Order to be so constructed or reconstructed in accordance with plans and specifications to be approved by the highway authority (which approval shall not be unreasonably withheld). For the reasons given above, in an extension to the model clauses paragraph (2) has been inserted in addition to the model clauses providing that if the highway authority does not respond within 28 days, or does not give any reasons for refusing consent, approval is deemed to have been given. This is preceded in article 16 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780) and article 18 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

**Article 20** (*Agreements with street authorities*) allows Network Rail to enter into agreements with street authorities relating to any street created or affected under this Order. These agreements would allow Network Rail and the street authority to agree points such as who is responsible for undertaking certain works affecting streets

under this Order, a time period for the completion of the works and setting out the terms of any payment which may be made. The model clause is extended (Paragraph (1)(b)) so as to include agreements relating to the strengthening, improvement, repair or reconstruction of any street under powers conferred by this Order. This extension is preceded in article 17 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

**Article 21** (*Accommodation Crossings*) makes provision for the extinguishment of all public or private rights of way (if any) over the accommodation crossings which are specified in Parts 1 and 2 of Schedule 8 (*accommodation crossings*). In the case of the accommodation crossings specified in Part 1 of Schedule 8 (*accommodation crossings for which a substitute is to be provided*), Network Rail may only exercise the powers once the substituted accommodation facility specified in relation to the accommodation crossing has been provided. Provision is made for the payment of compensation. This provision is not included in the model clauses but it follows provisions such as article 17 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679) and article 10 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

### *Supplemental Powers*

**Article 22** (*Discharge of water*) enables Network Rail to discharge water into any watercourse, public sewer or drain in connection with the construction, operation or maintenance of the proposed works with the approval and (if provided) superintendence of the person to which the watercourse, public sewer or drain belongs (such approval may be subject to reasonable terms and conditions but must not be unreasonably withheld). The model clauses are extended so to also cover operation. In addition, the model clauses are extended so as to provide that any relevant person who fails to respond to an application for consent or approval within 28 days of the application being made is deemed to have given its consent. These extensions to the model clauses have precedent in the same context in article 19 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679), article 13 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 17 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044) and article 16 of the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923).

In Paragraph (7) the wording of the model clauses has been updated to refer to the environmental permitting regime introduced by the Environmental Permitting (England and Wales) Regulations 2010 (S.I. 2010 No. 675).

**Article 23** (*Protective works to buildings, roads and apparatus of a statutory undertaker*) permits Network Rail to carry out certain protective works (as defined in Paragraph (11)) before, during or after construction of the authorised works (up to a period of 5 years after that part of the authorised works is opened for use) to any building, and in an extension to the model clauses, any road or any apparatus of a statutory undertaker within the Order limits or the Protective Works limits which Network Rail consider necessary or expedient. The Protective Works limits are defined in Article 2(1) and represent land over which Network Rail only requires entry pursuant to this article to carry out protective works.

This will allow Network Rail to carry out any protective works that may be required to buildings, roads and apparatus of a statutory undertaker as a result of the proposed works. Provision is made in the article for surveys and notice, and the payment of compensation.

This article as extended from the model clauses is preceded in article 20 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679), article 14 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933) and article 18 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044).

The protective works as defined in Paragraph (11) are preceded in article 15 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 20 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

**Article 24** (*Power to survey and investigate land*) confers upon Network Rail power (upon notice to every owner and occupier of that land) to survey and investigate land within the Order limits and to make trial holes, carry out ecological or archaeological investigations and place on, leave on and remove apparatus. It makes provision for the payment of compensation. Approval (which may not be unreasonably withheld) for the making of trial holes is required, in the case of a carriageway or footway from the highway authority, or in the case of a private street, from the street authority. For the reasons given above in a departure from the model clauses a highway or street authority which fails to respond to an application for consent within 14 days of the application being made is deemed to have given its consent. Such provision has precedent in the same context in article 15 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 15 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027) and article 16 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446).

**Article 25** (*Temporary closure of, and works in, the Huddersfield Broad Canal and the Calder and Hebble Navigation*) in an extension to the model clauses Article 25 confers upon Network Rail power to temporarily close and carry out the temporary activities listed in Paragraph (1) within the relevant parts of the Huddersfield Broad Canal and Calder and Hebble Navigation within the Order limits for the purposes of the construction of the authorised works. Network Rail is required to restrict the closure or obstruction to the minimum necessary and compensation is payable to any person who suffers loss by reason of the suspension or interruption of any right under this article. This provision is not within the model clauses but follows provisions such as article 16 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933) and article 20 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780).

### **PART 3**

## **ACQUISITION AND POSSESSION OF LAND**

### **Powers of acquisition**

Part 3 of the Order contains provisions for the compulsory acquisition of land, the subsoil of land, rights and interests in land (including the imposition of restrictive covenants) and for the temporary possession of land for the purposes of, or in connection with, the authorised works and Network Rail's railway undertaking. It further provides for the payment of compensation.

**Article 26** (*Power to acquire land*) confers on Network Rail powers of compulsory acquisition of land within the limits of deviation and identified on the deposited plans and described in the book of reference, for the purposes of the authorised works. It also authorises the compulsory acquisition of land specified in Schedule 2 (*acquisition of certain lands for ancillary works*) for the purpose specified in that Schedule. It also provides for any land so acquired to be used for other purposes connected with or ancillary to the railway undertaking. In an extension of the model clauses Paragraph (3) provides that this article does not apply to land with the Protective Works limits (see also Article 23) and land specified in Schedule 17 (*temporary use of land for access*) (see also Article 36). This provision has precedent in article 22 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

**Article 27** (*Application of Part 1 of the 1965 Act*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965 (c.56). This provision is altered from the model clause to reflect changes made to the 1965 Act by the Housing and Planning Act 2016 (c.22) as applied in the recent Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017 No.1150) (Article 19), Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) (Article 18) and the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) (Article 23). Paragraph (5) provides for a revised notice period of 1 month instead of 3 months for the service of Notice of Entry in cases where that notice only relates to entry onto land subject to the acquisition of an easement or other right so to exercise such an easement or right. This revised period would not apply to cases where the Notice of Entry relates to taking possession of land that is subject to acquisition. The Order would permit and in certain cases limit Network Rail to acquiring the lesser interest of rights in land. In such cases a lesser notice period is appropriate where the Notice of Entry is limited to only enabling the exercise of an easement or right acquired over land. This approach has precedent in the orders referred to above and has been accepted as appropriate in the same context in Schedule 6 of the High Speed Rail (London – West Midlands) Act 2017 (c.7) and Schedule 7 of the High Speed Rail (West Midlands – Crewe) Act 2021 (c.2).

**Article 28** (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66) and provides for that Act to have effect subject to certain modifications. It gives Network Rail the option to acquire land by this method rather than through the notice to treat procedure. This provision is altered from the model clause to reflect changes made to the 1981 Act by the Housing and Planning Act 2016 (c.22) as applied in recent Transport and Works Act Orders such as the Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017 No.1150) (Article 20), Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) (Article 19) and Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) (Article 24).

**Article 29** (*Power to acquire new rights*) Paragraph (1) enables Network Rail to acquire rights over land it is authorised to acquire under article 26 (*power to acquire land*) by the creation of new rights as well as by acquiring rights already in existence.

In an extension to the model clauses, Paragraph (2) enables Network Rail to also impose restrictive covenants in relation to land referred to in articles 26(1)(a) and 26(1)(b) (*power to acquire land*) which is specified in columns (1) and (2) of Schedule 9 (*land subject to imposition of restrictive covenants*) as may be required for the purposes specified for that land in column (3) of that Schedule. This provision is made because Network Rail may need to impose restrictive covenants for the protection of the operation of the authorised works in respect of development that may be carried out near to or over land in which railway subsoil works are located for the purposes of strengthening and stabilising the railway or on land near to operational railway and/or operational railway electrification works. Such provision is based on the precedent in articles 24 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780) and the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044).

Paragraph (4) departs from the model clauses in providing that, in the case of land specified in columns (1) and (2) of Schedule 10 (*acquisition of new rights and imposition of restrictive covenants only*), Network Rail's compulsory acquisition powers are limited to the acquisition of such new rights and the imposition of restrictive or other covenants as may be required for the purpose specified in relation to that land in column (3) of Schedule 10. In relation to such land the possibility of outright acquisition is not required. This approach to limiting the scope of acquisition of well precedented in a number in a number of orders including article 21 of the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923), article 20 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) (Article 18) and article 25 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Following paragraph (4), Paragraph (5) also departs from the model clauses in providing that, in the case of land specified in columns (1) and (2) of Schedule 11 (*imposition of restrictive covenants only*), Network Rail's compulsory acquisition powers are limited to the imposition of restrictive or other covenants only as may be required for the purpose specified in relation to that land in column (3) of Schedule 11. In relation to such land the possibility of outright acquisition is not required.

Paragraph (6) departs from the model clauses by authorising such rights as may be acquired under this article to be acquired on behalf of the owners and occupiers affected by the closure of MDL 1 Bridge 10 – Occupation Underbridge. Such provision is based on article 25 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679) and article 25 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Paragraph (7) provides that where Network Rail needs only to acquire rights over land or to impose a restrictive covenant over land, it is not obliged to acquire any greater interest in that land.



Schedule 12, which is introduced by Paragraphs (7) and (8), makes modifications of relevant enactments concerning compensation and compulsory powers in relation to such acquisitions. Schedule 12 deviates from the model clauses to reflect changes made to the compulsory acquisition process by the Housing and Planning Act 2016 (c.22) as applied in recent Transport and Works Act Orders such as the Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017 No.1150) (Schedule 7), Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) (Schedule 6) and the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) (Schedule 13).

Paragraphs (9) and (10) are based on precedent found in article 18 of the Network Rail (Ipswich Chord) Order 2012 (S.I. 2012 No. 284), article 24 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780) and article 25 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114). These paragraphs provide for the acquisition of rights by an undertaker (as defined by Paragraph (11)), rather than Network Rail, in circumstances where Order Land is required for the diversion or relocation of their apparatus and the Secretary of State gives written consent. The issue here is that the dominant tenement to be benefitted by such rights is the undertaking of the undertaker rather than Network Rail's land, and it is therefore necessary for them rather than Network Rail to exercise the Order powers to acquire rights. The exercise of such powers by an undertaker is subject to same restrictions, liabilities and obligations (including the payment of compensation) as would apply under this Order if that power were exercised by Network Rail.

**Article 30** (*power to acquire ground anchor rights*), is not a model clause. This article limits Network Rail's powers of compulsory acquisition under the Order to the acquisition of ground anchor rights in relation to the land specified in columns (1) and (2) of Schedule 13 (*power to acquire ground anchor rights*). Ground anchor rights are defined in Paragraph (4) and include works to strengthen and stabilise Work No.5 and Work No. 14 and to maintain those works. In order to carry out such maintenance, and to protect any works carried out, Network Rail is authorised by Paragraph (5) to impose restrictive covenants in relation to the land specified in columns (1) and (2) of Schedule 13 (*power to acquire ground anchor rights*). The imposition of restrictive covenants is required for the maintenance or protection of the ground anchors, soil nails or other subsoil works referred to in Paragraph (4)(a) in respect of development that may be carried out near to or over land in which such subsoil works are located so to ensure their purpose of strengthening and stabilising the railway is not compromised.

Following the principle established by the model clauses for cases where acquisition is limited to subsoil acquisition, Paragraph (2) provides that where Network Rail acquires ground anchor rights in the subsoil or under surface of land or imposes a restrictive covenant in relation to such subsoil works Network Rail is not required to acquire a greater interest in the land. Therefore, Paragraph (3) disapplies in connection with such acquisition the counter notice procedures in respect of land subject to such limited acquisition. The purpose of these provisions is to give Network Rail the ability to minimise so far as is possible the extent of additional interests, not required for the project, that are to be compulsorily acquired, with consequently less impact on affected landowners, and lower payments of compensation, both of which are in the public interest. However, the operation of Paragraphs (2) and (3) are subject to Paragraph (6) and are to be disregarded where

Network Rail acquires ground anchor rights affecting a cellar, vault, arch or other construction forming part of a house, building or manufactory. Again Paragraph (6) incorporates the protection contemplated by the model clauses for cases where acquisition is limited to subsoil acquisition.

Such provision has precedent in article 27 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679) and article 21 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446).

**Article 31** (*power to acquire subsoil and imposition of restrictive covenants*), is not a model clause. This article limits Network Rail's powers of compulsory acquisition under the Order to the acquisition of so much of the subsoil or under surface of the land specified in columns (1) and (2) of Schedule 14 (*acquisition of subsoil*). Network Rail's acquisition is confined to the subsoil of this land as Network Rail only requires the control of the subsoil in order to construct subsoil works in this land that are required to strengthen and stabilise Work No. 1A and Work No. 1B. However, in addition, in order to maintain and protect such subsoil works in respect of development that may be carried out near to or over land in which such subsoil works are located so to ensure their purpose of strengthening and stabilising the railway is not compromised Network Rail is authorised by Paragraph (2) to impose restrictive covenants in relation to the land specified in columns (1) and (2) of Schedule 14 (*acquisition of subsoil*).

As with Article 30, following the principle established by the model clauses for cases where acquisition is limited to subsoil acquisition, Paragraph (3) provides that where Network Rail acquires part of, or rights in, the subsoil or under surface of land or imposes a restrictive covenant in relation to such subsoil works Network Rail is not required to acquire a greater interest in the land. Therefore, Paragraph (4) disapplies in connection with such acquisition the counter notice procedures in respect of land subject to such limited acquisition. The purpose of these provisions is to give Network Rail the ability to minimise so far as is possible the extent of additional interests, not required for the project, that are to be compulsorily acquired, with consequently less impact on affected landowners, and lower payments of compensation, both of which are in the public interest. However, the operation of Paragraphs (3) and (4) are subject to Paragraph (5) and are to be disregarded where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory. Again Paragraph (5) incorporates the protection contemplated by the model clauses for cases where acquisition is limited to subsoil acquisition.

This article is based on the precedent set out in articles 23 and 24 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044).

**Article 32** (*Power to acquire subsoil or airspace only*) authorises Network Rail to acquire the subsoil or airspace over any land without acquiring the whole of that land. In certain cases it will be necessary only to acquire a stratum of land above or below the surface (e.g. to accommodate a bridge over a road or foundations in the subsoil) and in the absence of Article 32 Network Rail would be obliged to acquire the whole interest in the land. It is based on the model clause relating to the acquisition of the subsoil but is extended to the acquisition of airspace as well. There are precedents for this in article 8 of the Network Rail (Reading) (Land Acquisition) Order 2009 (S.I.

2009 No. 2728), article 26 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679), article 22 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 26 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Paragraph (2) departs from the model clauses in providing that, in the case of land specified in columns (1) and (2) of Schedule 15 (*land of which only subsoil may be acquired*), Network Rail's compulsory acquisition powers are limited to the acquisition of only so much of, or such rights in, the subsoil or under-surface of that land. In relation to such land the acquisition of the surface is not required.

As with Articles 30 and 31, following the principle established by the model clauses for cases where acquisition is limited to subsoil acquisition, Paragraph (3) provides that where Network Rail acquires part of, or rights in, the subsoil or under surface of land Network Rail is not required to acquire a greater interest in the land. Therefore, Paragraph (4) disapplies in connection with such acquisition the counter notice procedures in respect of land subject to such limited acquisition. The purpose of these provisions is to give Network Rail the ability to minimise so far as is possible the extent of additional interests, not required for the project, that are to be compulsorily acquired, with consequently less impact on affected landowners, and lower payments of compensation, both of which are in the public interest. However, the operation of Paragraphs (3) and (4) are subject to Paragraph (5) and are to be disregarded where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory. Again Paragraph (5) incorporates the protection contemplated by the model clauses for cases where acquisition is limited to subsoil acquisition.

This limitation on acquisition has precedent in article 23 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044).

**Article 33** (*Rights under or over streets*) permits Network Rail to appropriate and use so much of the subsoil of, or airspace over, any street within the limits of deviation for the scheduled works and the limits of land to be acquired or used without being required to acquire any part of the street or any easement or right in it. Provision is made for the payment of compensation.

**Article 34** (*Temporary use of land for construction of works*) enables Network Rail, in connection with the carrying out of the authorised works, to take temporary possession of (i) land listed in Schedule 16 (*land of which temporary possession may be taken*) and (ii) land within the scope of Paragraph (1)(a)(ii) which is subject to compulsory acquisition under the Order provided the compulsory acquisition process has not begun in relation to it. Paragraph (1)(a)(ii) is an addition to the model clauses. It follows the approach adopted in a number of recent Orders (e.g. article 27 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679, article 21 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No.2027), article 24 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 28 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) ). It allows greater flexibility in the event that following detailed design of the works it is decided that only temporary occupation rather than permanent acquisition of land is required.

The provisions also depart from the model clauses in allowing (as well as temporary works), permanent mitigation works specified in Schedule 16 (*land of which temporary possession may be taken*) and other permanent mitigation works to be constructed and left on the land, without a requirement for these to be removed. This would apply, for example, where mitigation is provided but Network Rail does not need to retain a permanent interest or rights in the land.

In respect of certain specified plots of land the power of temporary occupation and use is limited to the airspace above the buildings located on the land to allow for temporary utility diversions required in connection with the construction of the authorised works. This is provided for in Article 35(2) and Article 35(13). This limitation on temporary possession has precedent in article 27 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933).

**Article 35** (*Temporary use of land for maintenance of works*) provides for Network Rail to take temporary possession of the land within the Order limits (other than that consisting of a house, garden or occupied building) for the purpose of maintaining the authorised works or ancillary works in the five years following the opening of the railway. Network Rail may construct temporary works and buildings on such land if they are reasonably required for the maintenance of the authorised or ancillary works. Provision is made for notice to be given.

**Article 36** (*Temporary use of land for access*) authorises the use of land specified in Schedule 17 (*temporary use of land for access*) for the purpose of temporary access (rather than possession) in connection with the construction of the authorised works. 7 days' notice is required to be given to the owners and occupiers unless access is urgently required. This is not a model clause but the purpose of the power is to minimise blight to the land in question where outright acquisition, the acquisition of permanent rights or temporary possession is not required. This provision has precedent in article 11 of the Network Rail (Reading) (Land Acquisition) Order 2009 (S.I. 2009 No. 2728) and article 30 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

### *Compensation*

**Article 37** (*Disregard of certain interests and improvements*) provides that in assessing the compensation payable in respect of compulsory acquisition the Upper Tribunal must 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 38** (*Set-off for enhancement in value of retained land*) provides that, in assessing the compensation payable to any person in respect of the acquisition of any land, new rights over land or the imposition of restrictive covenants, the Upper Tribunal must set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of the construction of the authorised works.

## Supplementary

**Article 39** (*Extinction or suspension of private rights of way*) provides for the extinguishment of private rights of way over land compulsorily acquired, and the suspension of private rights of way in respect of land temporarily occupied and for payment of compensation.

In addition to the provisions of the model clauses, Paragraph (7) of this article provides for Network Rail to exclude the application of any or all of the provisions of this article and to enter into agreements making contrary provision. Such provision has precedent, in particular, in article 40 of the Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005 No. 120) and is useful for the purposes of flexibility. That precedent has been adapted so that restrictions on powers to extinguish or suspend private rights of way in agreements are only effective if such agreements are made in contemplation of the Order, see for example article 26 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No.2027) and article 32 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780), article 28 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 32 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

The model clause is also extended so as to apply to private rights of way over land subject to the imposition of restrictive covenants or the compulsory acquisition of rights. In such circumstances, the private rights are extinguished only insofar as they are incompatible with the exercise of the right or the burden of the restrictive covenant. This has precedent in article 28 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446).

**Article 40** (*Time limit for exercise of powers of acquisition*) imposes a time limit of five years from the coming into force of this Order for the exercise of powers of compulsory acquisition of land.

## PART 4

### MISCELLANEOUS AND GENERAL

**Article 41** (*Defence to proceedings in respect of statutory nuisance*) provides Network Rail with a 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 or 65 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 a model clause, this is a provision which has now become common. Article 38 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679) and article 28 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No.2027) are examples of recent precedents.

Following article 35 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) ), 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.

**Article 42** (*Planning permission*) ensures that once constructed, the railway will be treated as operational land and so will have the benefit of permitted development rights under Part 8 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015 No. 596).

**Article 43** (*Power to lop trees overhanging the authorised works*) enables Network Rail to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised railway and danger to passengers and users. Provision is included for compensation.

**Article 44** (*Open space and exchange land*), provides for equivalent land to be given as exchange land for the purposes of section 19 of the Acquisition of Land Act 1981 (c.67) to the owners of the public open space land (defined by Paragraph (5) as “the special category land”) that is to be acquired by Network Rail. The particular land which is to be exchanged is specified on the plan entitled “Open Space Plans” attached to the deposited plans. This article departs from the model clauses by providing in Paragraph (2) that the special category land will be discharged from all rights, trusts and incidents to which it was previously subject upon Network Rail taking possession of that land. However, as provided by Paragraph (1), Network Rail’s possession of the special category land is contingent upon Network Rail having first taken possession of the exchange land. Paragraph (4) then provides that the exchange land (which is to be laid out as replacement open space by Network Rail in accordance with paragraph (3)) will vest in Kirklees District Council subject to Kirklees District Council having certified that the exchange land, has been laid out as open space to its reasonable satisfaction. Such land will then vest subject to such rights as may be required by Network Rail to enable Network Rail to carry out any monitoring, remedial or maintenance works it may be required to undertake on the land identified as exchange land. This provision is based on article 45 of the Luton Dunstable Translink Order 2006 (S.I. 2006 No. 3118).

**Article 45** (*Open space land*) This article is not in the model clauses. This article provides that when Network Rail enters onto open space land, as defined in Paragraph (2), under section 11(1) of the Compulsory Purchase Act 1965 or section 8 of the Compulsory Purchase (Vesting Declarations) Act 1981 the open space land will be discharged from all rights, trusts and incidents to which it was previously subject. This article is included to address open space land for which it has been certified under section 19 of the Acquisition of Land Act 1981 (c.67) that land in exchange is unnecessary.

**Article 46** (*Power to operate and use railway*) authorises Network Rail to operate and use the railway.

**Article 47** (*Extension of maintenance obligations from the relevant agreement to Work No.7*), this article is not a model clause. This article makes provision for the extension of maintenance obligations contained in the agreement between the British Railways Board and the Mayor, Alderman and Burgesses of the County Borough of Huddersfield relating to bridge MVL3/102 (being the maintenance obligations which currently apply to the maintenance of this bridge which carries the Leeds Road (A62) over the existing railway) to the operation and maintenance of the bridge comprised within Work No.7 which will carry the Leeds Road (A62) over the existing railway and Work No.5. The extension of these maintenance obligations is subject to the

modifications referred to in Paragraph (2). This article follows precedent in article 85 and Schedule 17 of the Nottingham Express Transit System Order 2009 (S.I. 2009 No. 1300) and article 20 of the High Speed Rail (London – West Midlands) (Greatmoor Railway Sidings Etc.) Order 2018 (S.I. 2018 No. 693).

**Article 48** (*Disapplication of the 1887 Agreement*), this article is not a model clause. This article makes provision to disapply an agreement between the London and North Western Railway Company, the Local Board of the District of Ravensthorpe in the County of York and the Local Board of the District Thornhill in the County of York which concerns the construction and maintenance of roads and road bridges which are to be subject to street alteration works or bridge demolition and reconstruction works under this Order. Due to the nature of these works this agreement is to be disapplied so to enable such street alteration works and bridge works to be constructed and maintained in the manner prescribed by this Order (see Part 2 above and provisions regarding the construction of works) and in accordance with the requirements of this Order relating to the stopping up of streets (Article 14), the alteration of the layout etc. of streets (Article 15) and the construction and maintenance of bridges carrying public roads over or under the railway (Articles 18 and 19).

**Article 49** (*Obstruction of construction of authorised works*) makes it a criminal offence without reasonable cause to obstruct the construction of the authorised works and to interfere with Network Rail's apparatus.

**Article 50** (*Traffic regulation*) this article is not a model clause. This article is required to enable Network Rail to make provision, with the consent of the traffic authority, to revoke, amend or suspend existing traffic regulation orders or to make traffic regulation for the matters set out in Paragraph (1) for the purposes of, or in connection with, or in consequence of the construction, maintenance or operation of the authorised works. This power is preceded in article 39 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933)

Network Rail's exercise of this power is subject to the consent of the traffic authority, which consent shall not be unreasonably withheld. For the reasons given above in relation to Articles 16 and 17, paragraph (3) has been inserted to provide that if within 28 days of the application for consent being made a traffic authority fails to respond to an application for consent, or refuses consent without giving any grounds for its refusal, the traffic authority is deemed to have given its consent.

**Article 51** (*Traffic signs*) authorises Network Rail to place and maintain traffic signs for the purposes of the authorised works or in connection with a traffic regulation order made under Article 50 and makes provision requiring Network Rail to consult with and enter into arrangements with the traffic authority for this purpose. This article is based upon a preceded provision in article 38 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933) and article 44 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446)

**Article 52** (*Disclosure of confidential information*) makes disclosure of certain confidential information obtained upon entry to certain premises under article 23 (*protective works to buildings, roads and apparatus of a statutory undertaker*) or article 24 (*power to survey and investigate land*) a criminal offence.

**Article 53** (*Statutory undertakers etc.*) introduces Schedule 18 to the Order which contains specific safeguards for statutory undertakers.

**Article 54** (*Protection of interests*) introduces Schedule 19 to the Order which is in five parts containing detailed protective provisions for specific bodies.

**Article 55** (*Certification of plans etc.*) requires Network Rail to submit the book of reference, the deposited plans and the deposited sections to the Secretary of State for certification after the making of this Order.

**Article 56** (*Service of notices*) makes provision as to the service of notices or other documents for the purposes of the Order.

**Article 57** (*No double recovery*) prevents compensation being payable in respect of the same matter both under the Order and under any other enactment, contract or rule of law.

**Article 58** (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration.



**DEPARTMENT FOR TRANSPORT  
2021**

Rule 10(2)(b)

**Transport and Works Act 1992**

**Transport and Works (Applications and  
Objections Procedure) (England and  
Wales) Rules 2006**

**THE NETWORK RAIL (HUDDERSFIELD  
TO WESTOWN (DEWSBURY)  
IMPROVEMENTS) ORDER**

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**Explanatory Memorandum required  
under Rule 10(2)(b)**

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