The Northumberland Line Order

Explanatory Memorandum (Revision 1)



Northumberland
County Council

Rule 10(2)(b)

TRANSPORT AND WORKS ACT 1992

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

THE NORTHUMBERLAND LINE ORDER 202[*]

EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article of and Schedules to 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).

The application for the Order has been made by Northumberland County Council ("the Council"). The Order would confer powers on the Council for the closure of specified level crossings, the permanent and temporary stopping up and diversion of highways and streets, the acquisition of land compulsorily (including rights over land) and the temporary use of land, as well as to undertake certain ancillary works, all in connection with works to facilitate the re-introduction of passenger rail services between Ashington in the County of Northumberland and Newcastle upon Tyne ("the Project").

The majority of the works associated with the Project will be permitted either under separate planning permissions which are been sought from the relevant local planning authorities under Part 3 of the Town and Country Planning Act 1990, or by permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015).

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.

A number of precedents have been followed from comparable orders made in relation to the closure of level crossings, compulsory acquisition of land and other associated matters in connection with railway improvements. These include the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020, the Network Rail (Suffolk Level Crossing Reduction) Order 2020, the Network Rail (London to Corby) (Land Acquisition) Order 2020 and the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018.

PART 1

PRELIMINARY

Part 1 of the Order contains preliminary provisions.

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

Article 2 (Interpretation) contains provisions for the interpretation of words and phrases used in the Order. Definitions additional and distinct from 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.

The term “authorised works” is not used, and instead the Order uses the term “the development”. This term is defined by reference to works authorised by the Order and other works required in connection with the Project which will either be permitted by the planning permissions specified in Schedule 1 (or (a) related permissions granted under section 73 of the Town and Country Planning Act 1990 or (b) any other planning permissions granted for the development specified in Schedule 1), or carried out in exercise of permitted development rights under the Town and Country Planning (General Permitted Development) (England) Order 2015.

Because the works carried out under the planning permissions and permitted development rights are not authorised by the Order, it is more appropriate to use the term “the development” than “the authorised works”. This formulation has precedent in other orders which make provision in connection with works which have secure planning permission; see for example article 2 of The Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) Order 2018 (S.I. 2018 No. 571).

A new paragraph (5) explains that references to numbered plots are references to plot numbers on the land and works plans. This has been added to provide clarity and has precedent in the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

PART 2

WORKS PROVISIONS

Part 2 of the Order contains provisions authorising works and other activities to facilitate the Project.

Article 3 (Power to construct and maintain works) authorises the Council to construct and maintain certain works required in connection with the Project. Specifically, paragraph (a) authorises works required to provide new or diverted public rights of way in connection with the closure of level crossings authorised by article 7 and the temporary stopping up of streets authorised by article 9. These works may only be carried out within the Order limits and, in the case of the permanent rights of way, in the locations identified in column (4) of Schedule 2 and column (4) of Part 1 of Schedule 3 (but only to the extent such works are not already covered by a separate planning permission).

Paragraph (b) authorises works to provide parking bays for vehicles at the specific plots identified in the article and on the land and works plans. The parking bays are at locations adjacent to the highway and are required to provide a safe parking place for vehicles used by Network Rail personnel addressing matters at the nearby level crossings. The provision also authorises the alteration of the layout of any adjacent street, although any such alterations can only be provided with the consent of the street authority.

Paragraph (c) authorises works to erect and construct temporary worksites and provide temporary haul roads which will be used in connection with the development. These temporary works may be carried out on the land specified in Schedule 7 (land of which temporary possession may be taken), Schedule 8 (land on which a temporary right of access may be exercised) and Schedule 9 (temporary worksites).

The drafting of article 3 departs from the model provision because of the limited nature and scope of the works authorised by the Order.

Article 4 (Power to survey and investigate land) confers upon the Council 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 and bore holes, carry out ecological or archaeological investigations and place on, leave on and remove apparatus. It makes provision for the payment of compensation. Approval 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. The drafting of this provision is based on that found in article 14 of the Network Rail (London to Corby) (Land Acquisition) Order 2020.

Article 5 (Discharge of water) authorises the Council to discharge water into any watercourse, public sewer or drain in connection with the development with the approval of the person to which the watercourse, public sewer or drain belongs (such approval may be subject to reasonable terms and conditions). This provision is generally based on the model clauses.

Article 6 (Felling or lopping of trees) authorises the Council to fell or lop any tree or shrub within or overhanging land within the Order limits, or cut back its roots, where it believes that it is necessary to prevent the tree or shrub from obstructing or interfering with the Development or constituting a danger to persons using the Development.

The article also makes provision for compensation to be payable for any loss or damage arising from the lopping or felling of trees.

PART 3

CROSSINGS AND HIGHWAYS

Part 3 of the Order contains provisions relating to level crossings, accommodation crossings, public rights of way and highways.

Article 7 (Closure of level crossings) authorises the permanent stopping up of various level crossings specified in Schedule 2 and the extinguishment of all rights over those crossings, including any right of way. This article is not found in the model clauses but contains provisions similar to those included, for instance, in article 16 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679) and in article 3 of the Network Rail (Seaham Level Crossing) Order 2013 (S.I. 2013 No. 533).

Paragraph (1) authorises the permanent stopping up of the level crossings set out in columns 1 and 2 of Schedule 2. Paragraph (2) provides that, upon the stopping up of the level crossings, the highways specified in column 3 of Schedule 2 and any rights of way over them will be extinguished. The provisions are subject to the protective provisions for statutory undertakers in Schedule 10 which preserve the rights of such undertakers in highways stopped up under this this article. Paragraph (3) provides that paragraphs (1) and (2) are not to come into effect until the new highways specified in column 4 of the table in Schedule 2 has been completed to the satisfaction of the highway authority and is open for use. Paragraph (4) entitles those who have suffered loss as a result of the extinguishment of a private right of way under paragraph (2) to claim compensation under Part 1 of the Land Compensation Act 1961.

Paragraph (5) provides that this article is subject to paragraph 2 of Schedule 10 (provisions relating to statutory undertakers etc.).

Article 8 (Stopping up of streets) provides for the Council to permanently stop up the streets specified in Parts 1 and 2 of Schedule 3. No street listed in Part 1 of Schedule 3 can be stopped up unless a replacement street has first been provided. The streets listed in Part 2 of Schedule 3 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 the Council to use the stopped up street for the purposes of the Development, whilst paragraph (6) provides for payment of compensation to any person suffering loss of any private right of way under this article.

Paragraph (7) provides that this article is subject to paragraph 2 of Schedule 10 (provisions relating to statutory undertakers etc.).

Article 9 (Temporary stopping up and diversion of streets) provides for the temporary stopping up of streets. In an extension to the model clauses, paragraph (2) confers a power on the Council to use any street temporarily stopped up under this article, which is within the Order limits, as a temporary working site. Where the highway is specified in Schedule 4, the Council is only required to consult the relevant highway authority. This is on the basis that such stoppings up will have already been considered in the application for the Order. If the Council wishes to

temporarily stop up other highways which are not specified in Schedule 4, paragraph (5)(b) provides that the Council requires the consent of the relevant highway authority, which may attach reasonable conditions to any such consent.

Article 10 (Creation of new highways) is adapted from the model clauses and governs the creation of new highways under the Order (i.e. under articles 7 and 8). Paragraph (1) provides that the highways specified in column 4 of Schedule 2 (replacement and closure of level crossings) and column 4 of Part 1 of Schedule 3 (streets to be stopped up) are to have the designation specified in column 4 of the Schedules in which they are described upon completion to the reasonable satisfaction of the highway authority.

The article provides for the application of s.28 (compensation for loss caused by public path creation order) of the Highways Act 1980, subject to the modifications set out. set out in paragraphs 5 to 8. This has precedent in article 16 (replacement and closure of footpath level crossings) of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679).

Paragraph (7) of this article excludes from its scope the structure of any bridge or underpass carrying a highway over or under the railway as Network Rail will be responsible for maintaining the structure of any railway bridges or tunnels unless otherwise agreed with the relevant local authorities.

Article 11 (Means of access) authorises the Council in connection with the development to provide, or alter or improve, existing means of access at locations marked with an 'A' on the land and works plans (under article 11(a)). Under article 11(b), the Council may in connection with the development provide such other means of access, or alter or improve existing means of access, at any other locations within the Order limits that the Council reasonably requires for the purposes of the development. Any works to create or alter means of access under article 11(b) are subject to the approved by the highway authority. This provision is based on article 9 of the model clauses.

Article 12 (Street works) confers authority on the Council to enter onto so much of any street in connection with the development in order to carry out certain street works. Paragraph (1) permits the Council to break up or open the relevant street, or any sewer, drain or tunnel underneath; tunnel or bore under the street; place apparatus in the street; maintain apparatus in the street or change its position and carry out any works required or incidental to each of these works.

Paragraph (2) provides that the authority given by paragraph (1) is a statutory right for the purposes of the New Roads and Street Works Act 1991. Paragraph (3) provides that the Council's authority to construct works under paragraph (1) is subject to the consent of the street authority, which may attach reasonable conditions to any consent. This article is based on article 6 of the model clauses.

Article 13 (Agreements with highway authorities) allows the Council to enter into agreements with a highway authority in respect of works to highways authorised by the Order. Such agreements may relate to the construction of any works authorised by article 3 relating to highway land; the construction and maintenance of any new public right of way or street under the Order; and any stopping up, alteration or diversion of any right of way or street, and the maintenance of the same, under the Order.

Paragraph (2) sets out what such an agreement may provide for. This includes making provision for the highway authority to carry out any function under the Order relating to the highway in question, and specifying the mechanism by which detailed design for works must be approved by the highway authority before the works are implemented. The drafting is based on the model clauses but with modifications which reflect the circumstances of the Project. The modifications are similar to those included in the Network Rail (Suffolk Level Crossing Reduction) Order 2020.

PART 4

ACQUISITION AND POSSESSION OF LAND

Part 4 of the Order contains provisions for the compulsory acquisition of land and rights in land and for the temporary possession and use of land for the purposes of or in connection with the development.

Article 14 (Power to acquire land) confers on the Council powers of compulsory acquisition of land shown on the land and works plans and described in the book of reference, for the purposes of the development or for any purposes that are ancillary to Network Rail's railway undertaking (under paragraph (1)).

The general power of acquisition in paragraph (1) is subject to specific provisions which are set out in paragraph (2). This makes reference to article 17 (power to acquire new rights), article 19 (temporary use of land in connection with the development) and article 25 (time limit for exercise of powers of acquisition and temporary use of land), and provides that the power to acquire land does not apply to land that is subject to article 20 (temporary use of land for access). This provision is a revised version of the equivalent provision in the model clauses.

Article 15 (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) and has precedent in the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) and the Network Rail (Cambridgeshire Level Crossing Reduction) Order 2020 (S.I. 2020 No.1485).

Paragraph (5) provides for a revised notice period of 1 month instead of 3 where the notice to treat relates to acquisition of an easement or other right over land. Paragraph (8) makes it clear that the notice periods introduced by the Housing and Planning Act 2016 do not apply to the temporary possession or use of land under article 19 of this Order. These modifications have precedent in Schedule 14 to the High Speed Rail (London – West Midlands) Act 2017.

Article 16 (Application of the 1981 Act) 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 the Council 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 Compulsory Purchase (Vesting Declarations) Act 1981 by the Housing and Planning Act 2016 (c.22), in particular to omit sections 5A (time limit for the execution of a general vesting declaration).

Article 17 (Power to acquire new rights) authorises the creation of easements or other rights over any land the Council is authorised to acquire under article 14 (power to acquire land) and makes ancillary provision where rights are acquired. Paragraph (2) departs from the model clauses in restricting the Council's compulsory acquisition powers under the Order to the acquisition of rights in relation to the land identified in Schedule 5 for the purpose specified in relation to that land in column (3) of that Schedule. In relation to such land outright acquisition is not required. This is intended to reduce blight and follows a number of recent Orders. Paragraph (4) introduces Schedule 6 for the purpose of modifying legislation relating to compensation and the 1965 Act in terms of its application in relation to the compulsory acquisition of new rights under the Order.

Article 18 (Power to acquire subsoil or airspace only) is adapted from the model clauses (power to acquire subsoil only). Paragraph (1) enables the Council to acquire airspace or subsoil (or rights in the same) over the land referred to in article 14(1) (power to acquire land). This may be done as required for any purpose for which the land may be acquired rather than acquiring the whole of the land. Paragraph (2) provides that the Council is not required to acquire any greater interest in land where it acquires any part of or rights in the subsoil or airspace of the relevant land.

Article 19 (Temporary use of land in connection with the development) broadly reflects the model clauses. Paragraph (1) enables the Council, in connection with the development, to take temporary possession of (a) the land listed in Schedule 7 for the purpose specified in that Schedule; and (b) any other land within the Order limits (with the exception of land identified in

Schedule 8) which is subject to compulsory acquisition under the Order provided the compulsory acquisition process has not begun in relation to it. The wording in paragraph 1 follows the more limited form reflecting the limited works required to be constructed under this Order.

Paragraph (2) requires the Council to give not less than 14 days' notice to owners and occupiers before taking temporary possession. Unless agreed otherwise with the owners of the relevant land, the Council may not stay in possession beyond on the land for more than one year beginning with the date of completion of the works for the purposes of which that land was possessed temporarily (paragraph (4)).

Compensation is payable by the Council to the owners or occupiers for loss or damage experienced from the exercise of this power (paragraph 5)). The Council is not required to acquire any land or interest in the land that it takes temporary possession of (paragraph (9)).

Paragraph (11) provides that the provisions of the Neighbourhood Planning Act 2017 do not apply to any powers of temporary possession exercised under the Order. This is to provide certainty of the applicable regime to be applied, given the relevant provisions of that enactment are not yet in force.

Article 20 (Temporary use of land for access) authorises the use of land specified in Schedule 8 (land on which a temporary right of access may be exercised) for the purpose of temporary access (rather than possession) in connection with the development (under paragraph (1). Paragraph (2) requires not less than 7 days' notice to be given to an owners and occupiers, unless access is required urgently.

Paragraph (4) requires the Council to pay compensation to the owners and occupiers where there is any loss or damage arising out of the exercise of this power of temporary use.

This provision is not found within the model clauses, 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. The power enables the Council to have rights of access over the relevant land alongside existing landowners having continuing use. There is precedent for this provision in article 30 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No.114) and article 11 of the Network Rail (London to Corby) (Land Acquisition) Order 2020 (S.I. 2020 No.1259).

Paragraph (7) disapplies in connection with the power in this article the provisions of the Neighbourhood Planning Act 2017 (2017 c. 20) insofar as they relate to the temporary use of land. This is necessary as to provide certainty as the provisions of the 2017 Act are not yet in force and it is not known when they may come into force.

Article 21 (Disregard of certain interests and improvements) provides for the disregard by the Lands Chamber of the Upper Tribunal of any interest in land and enhancements of the value of any interest in land for the purposes of assessing compensation with respect to its compulsory acquisition. This applies where the Upper Tribunal is satisfied that the creation of the interest or the making of the enhancement of value was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

Article 22 (Set-off for enhancement in value of retained land) provides that in assessing the compensation payable to any person in respect of the acquisition under the Order of any land, under paragraph (1) the Lands Chamber of the Upper Tribunal must set off against the value of the land acquired any increase in value of any contiguous or adjacent land belonging to that person arising out of the construction or operation of the development.

Under paragraph (2), in assessing the compensation payable to any person in respect of acquiring any new rights over land from that person under article 17, the Lands Chamber of the Upper Tribunal must set off two points against the value of the rights so acquired. They are any increase in the value of the land over which the new rights are required and any increase in value of any contiguous or adjacent land belonging to that person, Those increases must accrue to such person as a result of the construction or operation of the development for this provision to apply.

Paragraph (4) is an additional provision which relates specifically to assessing the compensation payable in respect of the loss of entitlement to rental payments under article 34 (modification of agreements relating to land). It provides that, in assessing any such loss, the Tribunal must off set any increase in the value of any contiguous or adjacent land belonging to that person which will accrue as a result of the development.

Article 23 (Private rights over land) provides for the extinction of all private rights of way over land subject to compulsory acquisition under the Order. Extinguishment will take place on the sooner of the date of acquisition (compulsorily or by agreement) or date of entry by the Council under the 1965 Act paragraph (1). Under paragraph (2), all private rights over land within the Order limits which is owned the Council or Network Rail and is appropriated by them for the purposes of the development will be extinguished on such appropriation.

Compensation is payable by the Council to any person who suffers loss by the extinguishment or suspension of any private right under this article (paragraph (5)).

Paragraphs (7) and (8) provide for the Council and 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.

Article 24 (Open space land) This article is not in the model clauses. It provides that when the Council 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 the giving of land in exchange is unnecessary.

Article 25 (Time limit for exercise of powers of acquisition and temporary use of land) provides a time limit of 5 years from the coming into force of the Order for the exercise of the proposed powers of acquisition and temporary use of land.

PART 5

MISCELLANEOUS AND GENERAL

Part 5 of the Order contains miscellaneous and general provisions.

Article 26 (Planning permission) provides for deemed planning permission granted for certain of the works authorised by the Order (i.e. the works referred to in article 3(b) and article 11) to be specific planning permission for the purposes of planning legislation. This means that land acquired under the Order related to those works could be considered Network Rail's operational land for planning purposes should it take an interest in the land at a future date. This would ensure that once constructed, the relevant land 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). This provision is taken from article 31(3) of the model clauses.

Article 27 (Power to transfer benefit of the Order) provides the ability for the Council to transfer or grant by way of lease, the benefit of the Order or any part of it. The drafting is based on the model clauses but adapted to reflect the intention to transfer to Network Rail the benefit of certain

parts of the Order that are necessary to provide for the effective operation of the railway, given Network Rail's existing functions. Paragraph (4) requires the Secretary of State's consent to any transfer unless the transfer is to Network Rail in accordance with an agreement under article 28. The ability to transfer powers to Network Rail without the Secretary of State's consent reflects the intention that the development will become (and continue to be) part of the national rail network.

Article 28 (Agreements with Network Rail) allows the Council and Network Rail to enter into agreements in relation to the development under paragraph (1). Paragraph (2) provides a list of provisions that any agreement may include, such as in respect of the defraying of, or the making of contributions towards, the cost of development by the Council or by Network Rail (or jointly). Exercising powers and rights in connection with any such agreement will be subject to all relevant statutory and contractual provisions (paragraph (3)).

Paragraph (4) permits the Council and Network Rail to enter into agreements for the transfer to and vesting in Network Rail or the Council (or jointly) any part of the development or any works, lands or other property required for or in connection with the development.

Article 29 (Defence to proceedings in respect of statutory nuisance) provides the Council and 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 of the Control of Pollution Act 1974 (c.40), or that the nuisance complained of is a consequence of the construction, operation or maintenance 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 35 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) is a recent precedent. Following this precedent, 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 30 (Protective provisions) introduces Schedule 10 to the Order (protective provisions) which contains specific safeguards for statutory undertakers with apparatus on land acquired under the Order and in highways stopped up under the Order. In addition, Schedule 10 contains provisions for the protection of Network Rail.

Article 31 (Consents, agreement, certifications and approvals) make provision in respect of certain consents, agreements, certifications and approvals that need to be obtained by the Council under the Order. It ensures that any consents, agreements, certifications or approvals (a) cannot be unreasonably withheld or delayed (paragraph (1)); and (b) are deemed to be granted after a period of 28 days if no decision is made, beginning with the day any application for a consent, agreement, certification or approval is made (paragraph (2)).

It is common for orders to include equivalent provisions providing that such consents or approvals must not be unreasonably withheld and shall be deemed to be granted if not given within a defined period; see for example article 16(2) of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114). Rather than repeating this wording in each article which requires a consent, agreement, certification or approval to be obtained, this article establishes the general provision which applies to the Order as a whole.

Article 32 (Obstruction of construction of development) makes obstructing the construction of the development or interfering with, moving or removing any apparatus belonging to a person acting under the authority of the Council or Network Rail a criminal offence, unless there is a reasonable excuse.

Article 33 (Disapplication of provisions in the enabling Acts) provides for the disapplication of any enactment relating to the railway between Ashington and Newcastle which limits the level of tolls, fares or charges that can be levied in connection with the operation and use of that railway. This provision has been included as a precaution to ensure that any provisions within the original

local Acts relating to the railway which are incompatible with the operation of the modern railway do not apply so as to prevent the Project from operating as intended.

Article 34 (Modification of agreements relating to land) makes provision to modify agreements relating to the land on which parts of the railway are built. These agreements date back to the 19th century and were entered into by the railway company and the landowners when the railway between Ashington and Newcastle was originally constructed following authorisation by local Acts of Parliament.

The agreements include wayleave leases for terms of up to 1000 years which confer rights on the railway company to construct, maintain and use the railway on the land, and contain provisions relating to payments to the landowner in respect of the transport of freight and passengers on the railway. The provisions in respect of payments do not reflect the way in which the modern railway is owned and operated and give rise to the potential for disagreement between the parties, particularly as the use of the railway is increased to include passenger services. Paragraph (2) therefore provides that Network Rail must pay to the relevant landowner a capitalised sum by way of compensation for such losses arising as a result of paragraph (2) with such compensation to be determined in case of dispute under Part 1 of the Land Compensation Act 1961.

Article 35 (Certification of plans, etc.) provides for the Council to submit to the Secretary of State for certification the book of reference, the land and works plans and the rights of way plans after the making of the Order. This provision provides that it must be done as soon as practicable after the making of the Order.

Article 36 (Service of notices) makes provision as to the service of notices or other documents for the purposes of the Order.

Article 37 (No double recovery) prevents compensation being payable in respect of the same matter both under the Order and under any other enactment, any contract or any other rule of law.

Article 38 (Arbitration) makes provision for differences arising under any provision of the Order to be determined by arbitration, unless the relevant provision specifies a different process.