

TRANSPORT AND WORKS ACT 1992

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

THE NETWORK RAIL (HITCHIN (CAMBRIDGE JUNCTION)) ORDER

EXPLANATORY MEMORANDUM

This memorandum explains the purpose and effect of each article of and Schedule to the draft Network Rail (Hitchin (Cambridge Junction)) Order, as required by Rule 10(2)(a) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006.

The Order is promoted by Network Rail Infrastructure Limited (“Network Rail”) to permit Network Rail to construct and operate a new section of railway, running partly on embankment and partly on viaduct, to the north of Hitchin Station. The purpose of the Order is to enable rail services from Hitchin to Cambridge to pass over the East Coast Main Line at a separate grade. The Order would permit Network Rail to acquire, compulsorily or by agreement, land and rights in land and to use land.

The Order is based on the Model Clauses for Railways contained in Schedule 1 to The Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006/1954) (“the model clauses”) but occasionally departs from those clauses and follows other precedents or is adapted for the circumstances of the scheme. Where there is such a departure from the model clauses or adaptation, an explanation is provided below.

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) provides for the interpretation of words and phrases used in the Order.

Article 3 (Incorporation of Railways Clauses Consolidation Act 1845) incorporates, subject to amendments, various provisions in the Railways Clauses Consolidation Act 1845 (c.20).

Article 4 (Application of the 1991 Act) provides for the application of various provisions of the New Roads and Street Works Act 1991 (c.22).

PART 2

WORKS PROVISIONS

Part 2 of the Order contains provisions for and relating to the construction of the authorised works.

Article 5 (Power to construct and maintain works) would authorise the construction and maintenance of the principal works proposed (“the Scheduled Works”), which are described in *Schedule 1* to the Order and shown on the plans and sections deposited in connection with the application. The main scheduled work provides for the construction of a railway, running partly on embankment and partly on viaduct, to the north of Hitchin Station.

Paragraph (4) of article 5 provides for the construction and maintenance of works necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works. In accordance with the model clause, some of the ancillary works which will be required for the project are specified in paragraph (3). In addition to the types of ancillary works identified in the model clauses, paragraph (3) include descriptions of the following types of works which are likely to be necessary for this particular project:

- railway electrification and signalling works;
- works to erect and construct such offices and other buildings, yards, machinery, plant, apparatus, and other works, and conveniences as Network Rail thinks fit; and
- works to construct, provide and maintain all such embankments, viaducts, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or convenient.

The above provisions are commonly included in Orders authorising railways, for instance article 5 of the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006/3117). In addition article 5(3) would authorise Network Rail to carry out works required for:

- the strengthening, improvement, maintenance or reconstruction of any street; and
- the strengthening, altering or demolition of any building or structure.

These provisions have precedent in article 4 of the Docklands Light Railway (Stratford International Extension) Order 2006 (S.I.2006/2905). In addition, unlike the model clauses article 5(5) provides for the removal of temporary works.

The ancillary works referred to in article 5(3) and (4) may be constructed within the Order limits generally.

Article 6 (Power to deviate) provides for the limits within which Network Rail can deviate in the construction of the proposed works. In addition to the model clauses paragraph (2) provides for lateral deviation of the start and end points of the scheduled works as shown on the Order plans and, in respect of any intended bridge, viaduct, gantry or other structure above ground level, to deviate from the design shown on the Order plans. Precedent can be found for these additions to the model clauses (e.g. Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007 (S.I. 2007/2297) (article 6(2))). These provisions are required to provide sufficient flexibility in the construction of the authorised works.

Article 7 (Power to alter layout, etc, of streets) is based on the Model Clauses for Tramways contained in Schedule 2 to The Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006/1954) (“the model clauses for tramways”) and would permit 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 the alterations respecting the street detailed in *Schedule 2 (street subject to alteration of layout)*, without such consent. This power, which accords with the model clauses for tramways, would enable Network Rail to make adjustments to the street layout at Stotfold Road in order to accommodate a new junction with a new private access road (Work No.11) on the western side of the carriageway and to create a right turn lane for southbound construction traffic entering that access road. As these adjustments to Stotfold Road are considered essential, and given that they have been described in Schedule 2, an unconditional power has been sought.

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.

Article 8 (Power to execute street works) would confer authority on Network Rail to interfere with and execute works in or under certain streets specified in *Schedule 3 (streets subject to street works)* and within Order limits for the purposes of the proposed works.

Article 9 (Construction of new and stopping up of existing streets) provides for the permanent stopping up of a section of the two footpaths identified in columns 1 of the table in *Schedule 4 (streets to be stopped up and provision of substitutes)*. Each stopped up section of footpath, the extent of which is described in column 2 of the table, will, following construction of the authorised works, be replaced by the substitute section of new footpath specified in column 3 of the table in Schedule 4. Article 9(1) would authorise Network Rail to construct the new sections of footpaths by reference to the letters and numbers shown on the rights of way plan.

Where a section of footpath is closed, article 9(3) extinguishes all rights of way over it and allows Network Rail to use it for the purposes of its railway undertaking. Article 9(4) provides for payment of compensation.

Article 9 differs from the model clause in so far as the requirement (in paragraph (2) of the model clause) to provide the new street before the existing one is stopped up, or to provide a temporary alternative route until the completion and opening of the new path has not been included. Whilst it is necessary to stop up the identified sections of the existing paths to enable construction of the authorised railway, due to their close proximity to the authorised railway the two new sections of footpath to be constructed in substitution for those sections to be stopped up under article 9 cannot be completed, for safety reasons, until the construction of the authorised works is completed. It is also not possible to provide a temporary alternative route between the commencement and termination points for the stopping up of these sections of the footpath until the completion and opening of the new footpath because it is not feasible to provide safe temporary substitute paths through the construction sites.

Paragraphs (3),(4) and (5) of the model clauses equivalent of this article have not been included as the scheme does not include proposals for the stopping up of any street for which no substitute is to be provided.

Article 10 (Temporary stopping up and diversion of streets) provides for the temporary stopping up of streets subject to the consent of the street authority concerned (not to be unreasonably withheld but which may be subject to reasonable conditions) or, in the case of the temporary stopping up of those streets specified in *Schedule 5 (streets to be temporarily stopped up)* to the Order, following consultation with the street authority. In addition to the model clauses, this article provides that Network Rail may use any street stopped up under the powers of this article as a temporary work site. Such provision was included within article 16 of the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006/3117).

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.

Article 11 (Access to works) would confer power to provide or improve access at the streets specified in *Schedule 6 (access to works)* at or about the points marked "A" on the works and land plans. In respect of other locations within the Order limits, which are not listed in Schedule 6 and marked by an "A" on the works and land plans, Network Rail's exercise of powers to provide or improve existing access must be approved by the highway authority, such authority not to be unreasonably withheld. A highway authority which fails to respond to an application for consent within 28 days of the application being made shall be deemed to have given its consent.

Article 12 (Construction and maintenance of new or altered streets) makes provision for new streets and street alterations or diversions to be completed to the reasonable satisfaction of the highways authority (or the street authority in the case of alterations and diversions) and for their maintenance by Network Rail for a period of 12 months, and by the relevant authority thereafter. The private streets to be constructed which comprise Works Nos. 6, 9 and 11 are excluded from this provision as Network Rail and its successor in title will be responsible for maintenance of these private streets.

Paragraph (3) of this article excludes from its scope the structure of any bridge or tunnel carrying a street over or under Network Rail's railway. This is because Network Rail will be responsible for maintaining the structure of any railway bridges or tunnels beyond the initial period of 12 months identified in this article. An addition has been made to this model clause in order to clarify that paragraph (3) does not affect Network Rail's responsibility to maintain the surface of any highway under or over which the scheduled works shall be constructed, which will be governed by the provisions of paragraphs (1) and (2). This addition has precedent in the Nottingham Express Transit System Order 2009 (S.I. 2009/1300) (article 14(3)).

Article 13 (Agreements with street authorities) authorises Network Rail to enter into agreements with street authorities relating to the construction of new streets, works in or affecting streets and the stopping up, alteration and diversion of streets. It varies, at paragraph (1)(b), from the model clauses, following precedent in the Nottingham Express Transit System Order 2009 (S.I. 2009/1300) (article 17(1)(b)) by providing for agreements to be made in relation to the strengthening, improvement, repair or reconstruction of a road, which is considered appropriate and necessary in for the construction of the authorised works.

Article 14 (Discharge of water) would enable Network Rail to discharge water into any watercourse, public sewer or drain, in connection with the construction and maintenance of the proposed works with the approval and superintendence (if provided) of the authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to certain other conditions.

Article 15 (Power to survey and investigate land) would confer upon Network Rail power to survey and investigate land and to make trial holes after notifying the owners and occupiers of the land, and includes provision for the payment of compensation. In addition to the provisions of the model clauses, Network Rail would be authorised to take steps to protect or remove any flora or fauna on the land where the flora or fauna may be affected by the carrying out of the authorised works. Such a provision has a precedent in the Nottingham Express Transit System Order 2009 (S.I. 2009/1300) (article 25(1)(d)) and is considered to be a useful and appropriate extension to these preparatory powers. Approval (which may not be unreasonably withheld) for the making of trial holes shall, in the case of a carriageway or footway, be obtained from the highway authority, or on the case of a private street, from the street authority. A highway or street authority which fails to respond to an application for consent within 14 days of the application being made shall be deemed to have given its consent.

Article 16 (Obstruction of construction of authorised works) would make obstructing the construction of the proposed works or interfering with apparatus belonging to a person acting under the authority of Network Rail a criminal offence.

PART 3

ACQUISITION AND POSSESSION OF LAND

Part 3 of the Order contains provisions for the compulsory acquisition of land and rights in land 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 17 (Power to acquire land) would authorise the compulsory acquisition of the land shown on the plans deposited with the application so far as required for the purposes of the intended works, or for any other purposes connected with Network Rail's railway undertaking.

Article 18 (Application of Part 1 of the Compulsory Purchase Act 1965) provides for Part 1 of the Compulsory Purchase Act 1965 (c. 56) (as modified by the Order) to apply to the acquisition of land under the Order as it would to a compulsory purchase authorised under the Acquisition of Land Act 1981 (c. 67).

Article 19 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981) provides for the application, with modifications, of the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), which contains alternative vesting procedures for land subject to compulsory purchase powers, to the acquisition of land under the Order.

Article 20 (Power to acquire new rights) would permit Network Rail to create and acquire easements and other new rights over, or impose restrictive covenants affecting, land rather than the whole interest in any land. For this purpose, various enactments concerning compulsory acquisition and compensation would have effect as modified by *Schedule 8 (modification of compensation and compulsory purchase enactments for creation of new rights)*.

In addition to the model clauses, article 20(1) would authorise Network Rail to impose restrictive covenants upon land lying within the Order limits. It may be necessary to impose restrictive covenants upon land adjoining railway land to ensure that the use of that land will not interfere with the safe operation of the authorised railway, for example overhead signalling equipment. The power to impose restrictive covenants will enable Network Rail to minimise the amount of land which, otherwise, it may be necessary to acquire outright.

Paragraphs (4) and (5) are also additional to the model clauses. They authorise certain specified statutory utilities to exercise the power to acquire new rights conferred upon Network Rail by this article in respect of land which is or will be required for use in relocating any apparatus in consequence of the works. Before this may happen, the Secretary of State must consent in writing. These provisions provide flexibility as regards the means by which rights necessary to enable the diversion of statutory utilities' apparatus may be acquired. There is precedent for this approach in the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006/3117) (article 26(4) and (5)).

Article 21 (New rights, etc, only to be acquired in certain lands) is not taken from the model clauses but is included in order to reduce blight. It provides that only easements and other rights may be acquired, or restrictive covenants imposed over, the land specified in *Schedule 9 (land in which new rights, etc, only may be acquired)*. Network Rail does not have power to acquire such land itself. There is precedent for this provision in a number of recent Orders (e.g. Nottingham Express Transit System Order 2009 (S.I. 2009/1300) (article 34)).

The power to impose restrictive covenants has also been included within this article for the reasons given in relation to the inclusion of that power within article 20.

This article does not prohibit Network Rail from taking temporary possession of the land specified in Schedule 9 under article 24 (temporary use of land for construction of works).

Article 22 (Power to acquire subsoil only) enables Network Rail to acquire subsoil interests in land only. No further provision in relation to subsoil lying more than 9 metres beneath the surface needs to be made in this Order as no tunnels are involved.

Article 23 (Rights under or over streets) provides that Network Rail may use a street within the Order limits for the authorised works without being required to acquire any part of the street or any easement or right in the street. Provision is made for the payment of compensation.

Paragraph (6) is an addition to the model clauses. It provides that Network Rail may exercise its powers to appropriate land regardless of anything done pursuant to Part 1 of the Commons Act 2006. Part 1 of that Act makes provision, amongst other things, for the registration of land as a town or village green for a period of up to two years following cessation of such a use. Precedent can be found in the Nottingham Express Transit System Order 2009 (S.I. 2009/1300) (article 35(6)).

Article 24 (Temporary use of land for construction of works) provides that Network Rail may, in connection with the carrying out of the authorised works take temporary possession of (i) land listed in *Schedule 10 (land of which temporary possession may be taken)* and (ii) land it may acquire compulsorily in so far as it has not already begun the compulsory acquisition process in relation to that land, for the construction of the authorised works. Paragraph (1)(a)(ii) is additional to the model clauses but has precedent in a number of recent Orders (e.g. Nottingham Express Transit System Order 2009 (S.I. 2009/1300) (article 36(2)(i))). It allows greater flexibility in the event that following the detailed design of the works it is decided that only temporary occupation rather than permanent acquisition of land is required. Paragraph (5) identifies a parcel of land which Network Rail shall not be obliged to reinstate to the reasonable satisfaction of the owner. The reason for this is the nature of the specific works and land in question. The widening of the existing private access road which runs through National Grid's land (Work No.5) will provide permanent access to the railway embankment for maintenance purposes and Network Rail will require a permanent easement over it.

Network Rail would not be permitted to remain in possession of the land for a period of more than 2 years (not 1 year as in the model clauses) after the completion of the work as specified in that Schedule. The period of 2 years is necessary given the scale and extent of the works to be carried out and the time that will need to be taken to return the land back to its previous condition.

Article 25 (Temporary use of land for maintenance of works) provides that Network Rail may take temporary possession of land within the Order limits required for the purpose of maintaining the work or any ancillary works connected with it or securing the safe operation of any such work in the 5 years following the beginning of public use of the works. Temporary works can be constructed on the land as reasonably necessary. Provision is made for notice and compensation. This power does not apply with respect to houses, gardens or any other buildings for the time being occupied.

Article 26 (Disregard of certain interests and improvements) provides for disregarding certain interests in and enhancements to the value of land for the purposes of assessing compensation with respect to its compulsory acquisition where the creation of the interest or the making of the enhancement was designed with a view to obtaining compensation or increased compensation.

Article 27 (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, the tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of the construction of the authorised works.

Article 28 (Acquisition of part of certain properties) would enable Network Rail to acquire a part rather than the whole of properties subject to compulsory acquisition and contains a procedure enabling the relevant owner in the circumstances to require the whole to be taken, with disputes being determined by the Upper Tribunal. It replaces section 8(1) of the Compulsory Purchase Act 1965 (c. 56).

Article 29 (Extinguishment or suspension of private rights of way) provides for the extinction or suspension of private rights of way over land subject to compulsory acquisition or appropriation for the purposes of the Order. Such rights are suspended where Network Rail takes temporary possession, until this is given up. Provision for notification and the payment of compensation is included.

In addition to the provisions of the model clauses, paragraphs (5) and (6) of this article provides for Network Rail to enter into agreements making contrary provision and for Network Rail to exclude the application of the provisions of this article. Such provision has precedent in the Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005/120) (article 40) and in the Nottingham Express Transit System Order 2009 (S.I. 2009/1300) (article 41) and is useful for the purposes of flexibility.

Article 30 (Open space) would require Network Rail to provide land in exchange for any open space required in connection with the authorised works. This clause varies slightly from the model clause as, due to the nature and location of the scheme, Network Rail cannot provide the exchange land prior to the construction of the authorised works. Precedent for this variation to the model clause can be found in the Nottingham Express Transit System Order 2009 (S.I. 2009/1300) (article 43).

Article 31 (Time limit for exercise of powers of compulsory acquisition) 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 possession.

PART 4

OPERATION OF THE AUTHORISED RAILWAY

Part 4 of the Order makes provision for the operation of the railway to be authorised.

Article 32 (Power to operate and use the authorised railway) would authorise Network Rail to operate and use the authorised railway for the carriage of passengers and goods.

Article 33 (Power to lop trees) would enable 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 payment of compensation for loss or damage.

Article 34 (Trespass on authorised railway) makes trespass in relation to the authorised railway and land of Network Rail a criminal offence. Requirements are made in relation to the display of notices.

PART 5

PROTECTIVE PROVISIONS

Part 5 of the Order contains protective provisions.

Article 35 (Statutory undertakers, etc) introduces *Schedule 11 (Statutory undertakers, etc)* which contains specific safeguards for statutory undertakers generally.

Article 36 (For protection of electricity, gas, water and sewerage undertakers) introduces *Schedule 12 (for protection of electricity, gas, water and sewerage undertakers)* which makes provision for the protection of specified statutory undertakers.

PART 6

MISCELLANEOUS AND GENERAL

Part 6 of the Order contains a number of miscellaneous and general provisions.

Article 37 (Planning permission: supplementary matters) modifies planning legislation as to the treatment of land as operational land, so that the works authorised by this Order and covered by the application for a planning direction, will be treated as operational land.

Article 38 (Traffic regulation) is based on the model clauses for tramways and would allow Network Rail, subject to the consent of the traffic authority, to prohibit or restrict the stopping, parking, waiting, loading or unloading of vehicles along certain roads in each case as specified in *Schedule 13 (traffic regulation)* until the opening of the scheduled works for use.

Article 39 (Power to transfer undertaking) would allow Network Rail, with the consent of the Secretary of State, to transfer or lease any or all of its rights under the draft Order. This provision reflects article 35 of the model clauses and is designed to enable flexibility in the way in which the project is planned and delivered.

Article 40 (Application of landlord and tenant law) would override the application of landlord and tenant law in so far as it may prejudice agreements for the leasing of the railway.

Article 41 (Disclosure of confidential information) makes disclosure of certain information obtained upon entry to certain premises under article 15 (power to survey and investigate land) a criminal offence.

Article 42 (Defence to proceedings in respect of statutory nuisance) provides that no one shall be able to bring statutory nuisance proceedings under section 82(1) of the Environmental Protection Act 1990 (c. 43) (“the EPA”) in respect of noise if the noise is created in the course of carrying out the works authorised by this Order and which are unavoidable or works for which notice has been given under section 60, or consent been obtained under sections 61 or 65 of the Control of Pollution Act 1974 (c. 40). Such a provision is not in the model clauses but is common in other Orders (for example see article 36 of the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006/3117)) and is necessary for projects of this type.

Article 43 (Certification of plans, etc) would require Network Rail to submit copies of the Order plans and book of reference to the Secretary of State for certification as true copies, following the making of the Order.

Article 44 (Service of notices) makes provision as to the manner in which notices or other documents required or authorised to be served for the purposes of the Order are to be served.

Article 45 (No double recovery) makes provision to ensure that any compensation is not payable both under this Order and other compensation regimes for the same loss or damage. In addition to the provisions of the model clauses, this article provides that there is not to be double recovery under two or more different provisions of the Order.

Article 46 (Arbitration) makes provision for differences arising under any provision of the Order, other than those referred to the Upper Tribunal and unless otherwise agreed between the parties, to be determined by arbitration.