

TRANSPORT AND WORKS ACT 1992
TRANSPORT AND WORKS (APPLICATIONS AND OBJECTIONS PROCEDURE)
(ENGLAND AND WALES) RULES 2006

NETWORK RAIL (READING) (LAND ACQUISITION) ORDER

EXPLANATORY MEMORANDUM

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.

Application for the Order has been made by Network Rail Infrastructure Limited (“Network Rail”). The Order would confer powers on Network Rail to acquire land and interests in land in connection with various alterations and improvements to Reading Station and the railway tracks and facilities to the east and west of the Station. Such works have already been authorised by various local Acts and hence there is no need for this Order to give permission to Network Rail to construct, protect or maintain them. The relevant authorising enactments are set out in Schedule 1 to the Order. The Order does not describe the individual alterations and improvements but they will include provision of a new grade separated junction to the west of the station, new depot facilities on land adjoining Cow Lane, two new island platforms and a new north and south entrance at the station, the reinstatement of a dive-under to the east of the station and associated track and bridge works.

The draft Order is based on the model clauses but occasionally departs from them. Where there is a departure from the model clauses, an explanation is provided below.

PART 1

PRELIMINARY

Part 1 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.

Amongst other things, article 2(1) defines “*authorised works*” as meaning the works authorised by the statutes listed in Schedule 1 or any part of them.

Instead of referring to “*the limits of deviation*” or “*the Order limits*” as defined in the model clauses, this article describes “*the limits of land to be acquired or used*” as meaning the limits so shown and described on the land plans. There are, of course, no order limits or works plans accompanying this Order because the works are already authorised by the local Acts referred to in Schedule 1.

PART 2

ACQUISITION AND POSSESSION OF LAND

Powers of Acquisition

Part 2 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 provides for the payment of compensation.

Article 3 (*Power to acquire land*) confers on Network Rail powers of compulsory acquisition, for the purposes of the authorised works or for any other purposes ancillary to the railway undertaking of Network Rail, in relation to the lands identified on the land plans and described in the Book of Reference.

This power is subject to the restrictions contained in articles 7 and 10 of the Order (which limit the Order's powers in respect of certain land specified in Schedules 3 and 4 to the Order to the acquisition of rights over land and temporary possession of land) and does not apply to the particular plots of land listed in Schedule 5 to the Order, over which the Order confers only temporary access rights.

The Order accordingly confers different powers in relation to different parcels of land. In relation to land specified in Schedule 3 powers of compulsory acquisition are limited to the acquisition of rights (although temporary possession of such land is authorised if it is also specified in Schedule 4). In relation to land specified in Schedule 4 temporary possession powers are conferred, but no acquisition is authorised except for the acquisition of rights over that land, if the land is also specified in Schedule 3. In relation to land specified in Schedule 5 only a right of temporary use for purposes of access is conferred and no acquisition is permitted. In relation to all other land shown on the land plans the Order authorises outright acquisition.

Article 4 (*Application of Part 1 of the Compulsory Purchase Act 1965*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965.

Article 5 (*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 and provides for that Act to have effect subject to certain modifications. This gives Network Rail the option to acquire land by this method rather than through the notice to treat procedure.

Article 6 (*Power to acquire new rights*) makes ancillary provision where rights over land are acquired. Schedule 2 makes modifications of relevant enactments concerning compensation and compulsory powers in relation to such acquisitions.

Article 7 (*New rights, etc., only to be acquired in certain lands*) is not a model clause but is included in order to reduce blight. It provides that Network Rail's power of compulsory acquisition under Article 3 (*power to acquire land*), in respect of the land specified in Schedule 3 (*land in which only new rights, etc., may be required*), is limited to the acquisition of easements or other new rights. In such cases, Network Rail does not have power to acquire the land itself. The wording of this article has precedent, in particular, in article 25 of The Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006 No. 2905).

Article 8 (*Power to acquire subsoil or airspace only*) authorises Network Rail to acquire the subsoil in or the 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 the foundations of a bridge in the subsoil) and in the absence of such a provision Network Rail would be obliged to acquire the whole interest in the land. It follows the model clause relating to acquisition of the subsoil, but extends this to

acquisition of airspace (there are precedents for this in e.g. the Glasgow Airport Rail Link Act 2007 (2007 asp 1), section 13).

Article 9 (*Rights under or over highways*) permits Network Rail to enter upon and appropriate the subsoil of, or airspace over, highways without the requirement to acquire any part of the highway or any easement or right in the highway. This is a departure from the model clauses in that the power relates only to highways and not to private roads. The reason for this limitation is to avoid unnecessarily blighting private land.

Temporary possession of land

Article 10 (*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 land listed in Schedule 4 and also in paragraph (1)(b) of land subject to compulsory acquisition under the Order, in so far as the compulsory acquisition process has not begun in relation to the land. Paragraph (1)(b) is a departure from the model clauses but follows the approach adopted in a number of recent Orders (e.g. the Midland Metro (Wednesbury to Brierley Hill and Miscellaneous Amendments) Order 2005 (S.I. 2005 No. 927), and 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. Paragraph (1)(b) does not apply to houses, gardens or any other buildings for the time being occupied.

This article departs from the model clauses in that it is simply a right to use land and makes no reference to powers to remove any buildings or vegetation from that land or to construct temporary works and buildings on that land. The reason for this omission is that any such works powers that apply to particular land will be those set out in the relevant local Act.

Article 11 (*Temporary use of land for access*) authorises the use of land specified in Schedule 5 for the purpose of temporary access (rather than possession) in connection with the construction of the authorised works. Again this is not a model clause but the purpose of including a more limited power is to minimise the blight to the land in question where outright acquisition, the acquisition of permanent rights or temporary possession of the land is not required. The provision is modelled on paragraph 3 of Schedule 5 to the Crossrail Act 2008 (c.18).

Article 12 (*Temporary use of land for maintenance of works*) provides for Network Rail to use the land referred to in Article 3(1) other than specified in Schedules 3 and 5, or land consisting of a house, garden or occupied building for the purpose of maintaining the authorised or ancillary works. Again this differs from the model clause in that it authorises only use of land and not the construction of temporary works.

Compensation

Article 13 (*Disregard of certain interests and improvements*) provides that in assessing the compensation payable in respect of compulsory acquisition the Lands Tribunal shall 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 14 (*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 or new rights over land, the Lands 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.

Supplementary

Article 15 (*Acquisition of part of certain properties*) provides an alternative procedure where Network Rail acquire compulsorily part only of certain types of properties subject to the right of the owner to require the whole of the property to be acquired, if part cannot be taken without material detriment to the remainder.

Article 16 (*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 (6) 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. 2005/120) and is useful for the purposes of flexibility.

Article 17 (*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 3

MISCELLANEOUS AND GENERAL

Article 18 (*Statutory undertakers, etc.*) introduces Schedule 6 (*Provisions relating to Statutory Undertakers etc.*) to the Order. The Schedule contains provisions relating to the apparatus of statutory undertakers on land acquired under the Order.

Article 19 (*Protective provisions*) introduces Schedule 7 (Protective provisions), which contains detailed protection for gas, electricity, water and sewerage undertakers in relation to the authorised works.

Article 20 (*Certification of plans etc.*) provides for Network Rail to submit to the Secretary of State for certification the book of reference and land plans after the making of this Order.

Article 21 (*Service of notices*) makes provisions as to the service of notices or other documents for the purposes of the Order.

Article 22 (*No double recovery*) prevents compensation being payable in respect of the same matter both under the Order and under any enactment, contract or other rule of law.

Article 23 (*Arbitration*) provides for the method of arbitration where under the Order a dispute is to be settled by arbitration.

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