S T A T U T O R Y I N S T R U M E N T S

202[ ] No. 0000

TRANSPORT AND WORKS, ENGLAND

TRANSPORT, ENGLAND

The Network Rail (Tackley Level Crossing) Order 202[ ]

Made - - - - ***

Coming into force ***

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An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(**a**) for an Order under sections 1 and 5 of the Transport and Works Act 1992(**b**) ("the 1992 Act").

[Objections to that application have been withdrawn.]

[The Secretary of State has caused an inquiry to be held for the purposes of the application pursuant to section 11 of the 1992 Act.]

The Secretary of State, having considered [the objections made and not withdrawn] [and] [the report of the person who held the inquiry], has determined to make an Order giving effect to the [proposal comprised in the application [without modifications] [with modifications] [which in the opinion of the Secretary of State do not make any substantial change in the proposal] [proposals

(**a**) S.I. 2006/1466 as amended by S.I. 2010/439, S.I. 2011/556,S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/75, S.I. 2014/469, S.I. 2015/627, S.I. 2017/979 S.I. 2017/1070 and S.I. 2019/311.
(**b**) 1992 c. 42. Section 1 was amended by paragraphs 51 and 52 of Schedule 2 to the Planning Act 2008 (c. 29). Section 5 was amended by S.I. 2012/1659.

concerned with modifications which in the opinion of the Secretary of State make substantial changes in the proposals.]

[The Secretary of State having considered representation duly made under section 13 of the 1992 Act, has determined to make the Order applied for with modification].

Notice of the Secretary of State's determination was published in the London Gazette on [ ] 202[ ].

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11, 16 and 17 of Schedule 1 to, the 1992 Act, makes the following Order.

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Tackley Level Crossing) Order 202[ ] and comes into force on [ ].

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**a**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**b**);

"the 1980 Act" means the Highways Act 1980(**c**);

"the 1981 Act" means the Acquisition of Land Act 1981(**d**);

"the 1990 Act" means the Town and Country Planning Act 1990(**e**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**f**);

"the 2003 Act" means the Communications Act 2003(**g**);

"the 2015 Order" means the Town and Country Planning (General Permitted Development) (England) Order 2015"(**h**)

"address" includes any number or address used for the purposes of electronic transmission;

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purpose of this Order;

"bridleway" has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in section 329(1) (further provisions as to interpretation) of the 1980 Act;

"cycle track" has the same meaning as in section 329(1) (further provisions as to interpretation)(**a**) of the 1980 Act;

(**a**) 1961 c. 33.
(**b**) 1965 c. 56.
(**c**) 1980 c. 66.
(**d**) 1981 c. 67.
(**e**) 1990 c. 8.
(**f**) 1991 c. 22.
(**g**) 2003 c. 21.
(**h**) S.I. 2015/596

"the development" means any works and operations incidental or ancillary to the closure of the level crossing authorised by article 8, the provision of a footbridge with lifts at Tackley railway station and the construction of a bridleway and temporary construction compounds, all as comprise permitted development under the provisions of the 2015 Order;

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form,

and in this definition "electronic communications network" has the same meaning as in section 32(1)(**b**) (meaning of electronic communications and networks and services) of the 2003 Act;

"footpath" and "footway" have the same meanings as in section 329(1) (further provisions as to interpretation) of the 1980 Act;

"highway" and "highway authority" have the same meanings as in section 328 (meaning of "highway") and section 1 (highway authorities: general provision) of the 1980 Act;

"the land and rights of way plans" means the plans certified by the Secretary of State as the land and rights of way plans for the purposes of this Order;

"the limits of land to be acquired or used" means the limits of land to be acquired or used shown on the land and rights of way plans;

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace, and "maintenance" is to be construed accordingly;

"Network Rail" means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at Waterloo General Office, London, United Kingdom, SE1 8SW;

"the Order limits" means the limits of land to be acquired or used;

"owner", in relation to land, has the same meaning as in section 7(**c**) (interpretation) of the 1981 Act;

"statutory undertaker" means—

(a) any person who is a statutory undertaker for the purposes of the 1990 Act; and

(b) any public communications provider within the meaning of section 151(1) (interpretation of Chapter 1) of the 2003 Act;

"street" has the same meaning as in section 48 (streets, street works and undertakers) of the 1991 Act;

"street authority", in relation to a street, has the same meaning as in section 49 (street works in England and Wales) of the 1991 Act;

"the tribunal" means the Land Chamber of the Upper Tribunal;

"the undertaking" means the railway undertaking of Network Rail as existing from time to time; and

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in Network Rail's undertaking.

(**a**) The definition of "cycle track" was amended by section 1(1) and (2) of the Cycle Tracks Act 1984 (c. 38) and paragraph 21(2) of Schedule 3 to the Road Traffic Consequential Provisions) Act 1988 (c. 54.).

(**b**) Section 32(1) was amended by S.I. 2011/1210.

(**c**) The definition of "owner" was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

(3) References in this Order to numbered plots are references to plot numbers on the land and rights of way plans.

(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on a scheduled work are taken to be measured along the scheduled work.

(5) References in this Order to points identified by letters, with or without numbers, or by numbers, are to be construed as references to the points marked on the land and rights of way plans.

PART 2

WORKS PROVISIONS

Streets

Power to alter layout etc. of streets

3.—(1) Subject to paragraph (2), Network Rail may, for the purposes of constructing and maintaining the development, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and without limitation on the scope of that power, Network Rail may—

(a) increase the width of the whole or part of any carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;

(b) alter the level, create or increase the width of any kerb, footpath, footway, bridleway, cycle track or verge; and

(c) reduce the width of the carriageway of the street.

(2) Network Rail must restore to the reasonable satisfaction of the street authority any street which has been temporarily altered under this article.

(3) The powers conferred by paragraph (1) are not to be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(4) If within 28 days of receiving an application for consent under paragraph (3) a street authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

(5) When making an application under paragraph (3), Network Rail must notify the street authority of the effect of paragraph (4).

Power to execute street works

4. Network Rail may, for the purposes of the development, enter on any of the streets as are within the Order limits to the extent necessary and may—

(a) break up or open the street, or any sewer, drain or tunnel under it;

(b) place apparatus in the street;

(c) maintain, renew or alter apparatus in the street or change its position;

(d) demolish, remove, replace and relocate any street furniture;

(e) remove or install temporary and permanent signage;

(f) carry out re-lining and placement of road markings; and

(g) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) or (c).

Temporary stopping up, etc. of streets

5.—(1) During and for the purposes of the execution of the development, Network Rail may temporarily stop up, alter, divert, or restrict the use of any street and may for any reasonable time—

(a) divert the traffic from the street; and

(b) subject to paragraph (3), prevent all persons from passing along the street.

(2) Without limitation on the scope of paragraph (1), Network Rail may use any street stopped up under the powers conferred by this article as a temporary working site.

(3) Network Rail must provide reasonable access for pedestrians going to or from premises abutting on a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), Network Rail may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 2 (street to be temporarily stopped up) to the extent specified in column (3) of that Schedule.

(5) Network Rail must not exercise the powers conferred by this article—

(a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and

(b) in relation to any other street without the consent of the street authority which may attach reasonable conditions to any consent, but the consent must not be unreasonably withheld.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If within 28 days of receiving an application for consent under paragraph (5)(b) a street authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

(8) When making an application for consent under paragraph (5)(b), Network Rail must notify the street authority of the effect of paragraph (7).

Highway subject to redesignation

6.—(1) Subject to the provisions of this article, the highway specified in column (2) of Schedule 1 (redesignation of highway) will, on completion of works to the reasonable satisfaction of the highway authority, cease to be a highway of the description specified on the definitive map and statement as specified in column (3) and is designated as highway as described in column (4) of Schedule 1 (redesignation of highways).

(2) The satisfaction of the highway authority pursuant to paragraph (1) is to be signified by the issue by the highway authority of a certificate to that effect following a request for certification made by Network Rail.

(3) The works are to be treated as completed to the satisfaction of the highway authority for the purposes of paragraph (1) if the highway authority fails to reply to a request for certification that it is satisfied with the works within 28 days of receiving the request.

(4) Where making a request for certification under paragraph (2), Network Rail must notify the highway authority of the effect of paragraph (3).

(5) For the purposes of this article, the date of completion of works will be the date on which the highway authority issues a certificate in accordance with paragraph (2) or, in respect of the works of where paragraph (3) applies, the day falling 28 days after the date of the request for certification.

(6) The redesignation of the highway is to have effect as if the highway had been stopped up and immediately redesignated as described in column (4) of Schedule 1.

(7) Expressions used in this article and in the Wildlife and Countryside Act 1981(**a**) have the same meaning in this article as in that Act.

Agreements with street authorities

7.—(1) A street authority and Network Rail may enter into agreements with respect to the execution in the street of any works referred to in article 4 (power to execute street works).

(2) Such an agreement may, without limitation on the scope of paragraph (1)—

(a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and

(b) contain such terms as to payment and otherwise as the parties consider appropriate.

Level Crossing

Closure and replacement of level crossing

8.—(1) Subject to paragraph (3), the level crossing specified in column (2) of Schedule 3 (closure and replacement of level crossing) is stopped up and discontinued.

(2) Subject to paragraph 2 (provisions relating to statutory undertakers etc.), upon the stopping up and discontinuance of the level crossing referred to in paragraph (1)—

(a) all rights of way (whether public or private) over the crossings are extinguished; and

(b) any right of way over the part of the highway specified in column (3) of Schedule 3 (closure and replacement of level crossing) is extinguished.

(3) Paragraphs (1) and (2) are not to take effect with respect to the highway specified in columns (2) and (3) of Schedule 3 (closure and replacement of level crossing) until the replacement right of way specified in relation to it in column (4) of that Schedule has been provided to the reasonable satisfaction of the highway authority in accordance with article 9 and is open for use.

(4) Any person who suffers loss by the extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

Creation and maintenance of new highway

9.—(1) The new highway specified in column (4) of Schedule 3 (closure and replacement of level crossing) is to be completed to the reasonable satisfaction of the highway authority and the new highway, including any boundary structures, drainage or other structures laid under it, is to be maintained by and at the expense of Network Rail for a period of 12 months from its completion and after the expiry of that period by and at the expense of the highway authority, save that any boundary structures will be maintained by and at the expense of the relevant adjoining landower.

(2) On completion of the new highway in accordance with paragraph (1) it is to have the designation specified in column (4) of Schedule 3 (closure and replacement of level crossing).

(3) Section 28(**b**) (compensation for loss caused by public path creation order) of the 1980 Act is to apply to the new highway specified in column (4) of Schedule 3 (closure and replacement of level crossing) as if that hew highway had been created by a public path creation order.

(4) Section 28 of the 1980 Act has effect with the modifications mentioned in paragraphs (5) to (8).

(5) In sub-section (1), for the words "the authority by whom the Order was made" there are substituted the words "Network Rail Infrastructure Limited".

(6) For sub-section (2) substitute—

(**a**) 1981 c. 69.
(**b**) Section 28 was amended by S.I. 2006/1177.

"(2) A claim for compensation under this section is to be made to Network Rail in writing before the end of the period of 6 months beginning with the day on which the public right of way first becomes exercisable and is to be served on Network Rail by delivering it at, or by sending it by pre-paid post to the registered office of Network Rail Infrastructure Limited."

(7) Sub-section (3) is omitted.

(8) For the purposes of paragraphs (3) to (7), section 307 (disputes as to compensation which are to be determined by Upper Tribunal and related provisions) of the 1980 Act, in its application to section 28 by virtue of section 307(1), is to have effect as if in sub-section (2) for "the authority from whom the compensation in question is claimed", the words "Network Rail" are substituted.

(9) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain the new highway, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that Network Rail had taken such care as in all the circumstances was reasonably required to secure that the part of the new highway to which the action relates was not dangerous to traffic.

(10) For the purpose of a defence under paragraph (9), the court must in particular have regard to the following matters—

(a) the character of the new highway and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a highway of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the new highway;

(d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new highway to which the action relates was likely to cause danger to users of the new highway; and

(e) where Network Rail could not reasonably have been expected to repair that part of the new highway before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it is not relevant to prove that Network Rail had arranged for a competent person to carry out or supervise the maintenance of the part of the new highway to which the action relates unless it is also proved that Network Rail had given the competent person proper instructions with regard to the maintenance of the new highway and that the competent person had carried out those instructions.

(11) The approval of the highway authority pursuant to paragraph (1) is to be signified by the issue by the highway authority of a certificate to that effect following a request for certification made by Network Rail.

(12) The new highway is to be treated as completed to the satisfaction of the highway authority for the purpose of paragraph (1) if the highway authority fails to reply to a request for certification that it is satisfied with the work within 28 days of receiving the request.

(13) Where any highway created under this article passes over a scheduled work, the highway extends to include the scheduled work.

(14) For the purposes of this article, the date of completion of a new highway will be the date on which the highway authority issues a certificate in accordance with paragraph (11) in respect of that new highway or where paragraph (12) applies, the day falling 28 days after the date of the request for certification.

Supplemental powers

Discharge of water

10.—(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the development and for

that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by Network Rail under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(**a**).

(3) Network Rail must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) Network Rail must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) Network Rail must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) Network Rail must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides any requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(**b**).

(8) If a person who receives an application for consent or approval fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(9) Where an application for consent or approval is made under paragraph (3) or paragraph (4)(a), Network Rail must notify that person of the effect of paragraph (8).

(10) In this article—

(a) "public sewer or drain" means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, and internal drainage board, or a local authority; and

(b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(**c**) have the same meaning as in that Act.

Power to survey and investigate land

11.—(1) Network Rail may for the purposes of this Order—

(a) survey or investigate any land shown within the Order limits;

(b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as Network Rail thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;

(c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;

(d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and

(**a**) 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).
(**b**) S.I. 2016/1154.
(**c**) 1991 c. 57.

(e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 7 days' notice has been served on every owner and occupier of the land.

(3) Notice given in accordance with paragraph (2) must include—

(a) a statement of the recipient's rights under paragraph (15); and

(b) a copy of any warrant issued under paragraph (7).

(4) If Network Rail proposes to do any of the following, the notice must include details of what is proposed—

(a) searching, boring or excavating;

(b) leaving apparatus on the land;

(c) taking samples;

(d) an aerial survey; and

(e) carrying out any activities that may be required to facilitate compliance with the Conservation of Habitats and Species Regulations 2017(**a**).

(5) If Network Rail obtains a warrant after giving notice in accordance with paragraph (2) it must give a copy of the warrant to whom it gave that notice.

(6) Any person entering land under this article on behalf of Network Rail—

(a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph (7);

(b) may not use force unless a justice of the peace has issued a warrant under paragraph (7) authorising the person to do so;

(c) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes;

(d) may only enter and survey at a reasonable time; and

(e) must, if the land is unoccupied or the occupier is absent from the land when the person enters it, leave it secure against trespassers as when the person entered it.

(7) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

(a) that another person has prevented or is likely to prevent the exercise of that power; and

(b) that it is reasonable to use force in the exercise of that power.

(8) The force that may be authorised by the warrant is limited to that which is reasonably necessary.

(9) A warrant authorising the person to use force must specify the number of occasions on which Network Rail can rely on the warrant when entering and surveying or valuing land.

(10) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

(11) Any evidence in proceedings for a warrant under this article must be given on oath.

(12) No trial holes are to be made under this article—

(a) in a maintainable highway without the consent of the highway authority; or

(b) in any other street without the consent of the street authority,

but that consent must not be unreasonably withheld.

(**a**) S. I. 2017/1012.

(13) If either a highway authority or a street authority which receives an application for consent fails to notify Network Rail of its decision within 28 days of receiving the application for consent—

(a) under paragraph (12)(a) in the case of a highway authority; or

(b) under paragraph (12)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(14) Where an application for consent is made under paragraph (12)(a) or paragraph (12)(b), Network Rail must notify that authority of the effect of paragraph (13).

(15) Network Rail must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1965 Act.

(16) Nothing in this article overrides the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(**a**).

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Power to acquire land

12.—[Not used]

Application of Part 1 of the 1965 Act

13.—(1) Part 1 (compulsory acquisition under Acquisition of Land Act 1946) of the 1965 Act, in so far as not modified by or inconsistent with the provisions of this Order, applies to the acquisition of land under this Order—

(a) as it applies to a compulsory purchase to which the 1981 Act applies; and

(b) as if this Order were a compulsory purchase order under that Act.

(2) Part 1 of the 1965 Act, as applied by paragraph (1), has effect with the following modifications.

(3) Omit section 4 (which provides a time limit for compulsory purchase of land).

(4) In section 4A(1)(**b**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to the High Court in respect of compulsory purchase order), the three year period mentioned in section 4", substitute "section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 20 (time limit for exercise of powers of acquisition) of the Network Rail (Tackley Level Crossing) Order 202[ ].".

(5) In section 11(1B)(**c**) (powers of entry) in a case where the notice to treat relates only to the acquisition of an easement or other right over land, for "3 months" substitute "1 month".

(6) In section 11A(**d**) (powers of entry: further notices of entry)—

(a) in subsection (1)(a), after "land" insert "under that provision";

(b) in subsection (2), after "land" insert "under that provision".

(**a**) 1979 c. 46.
(**b**) Section 4A was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).
(**c**) Section 11(1B) was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.
(**d**) Section 11A was inserted by section 186(3) of the Housing and Planning act 2016.

(7) In section 22(2) (expiry of time limit for exercise of compulsory purchase power not to affect acquisition of interests omitted from purchase), for "section 4 of this Act" substitute "article 20 (time limit for exercise of powers of acquisition) of the Network Rail (Tackley Level Crossing) Order 20[ ].".

(8) In Schedule 2A(**a**) (counter-notice requiring purchase of land not in notice to treat)—

(a) omit paragraphs 1(2) and 14(2); and

(b) after paragraph 29, insert—

"PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 16 (temporary use of land for development) or 17 (temporary use of land for maintenance) of the Network Rail (Tackley Level Crossing) Order202[ ]."

Application of the Compulsory Purchase (Vesting Declarations) Act 1981

14.—(1) The Compulsory Purchase (Vesting Declarations) Act 1981(**b**) applies as if this Order were a compulsory purchase order.

(2) The Compulsory Purchase (Vesting Declarations) Act 1981, as applied by paragraph (1), has effect with the following modifications.

(3) In section 5(2) (earliest date for execution of declaration), omit the words from ", and this subsection" to the end.

(4) Omit section 5A(**c**) (time limit for general vesting declaration).

(5) In section 5B(**d**) (extension of time limit during challenge) for "section 23 of the Acquisition of Land Act 1981 (application to High Court in respect of compulsory purchase order), the three year period mentioned in section 5A" substitute "section 22 of the Transport and Works Act 1992 (validity of orders under section 1 or 3), the five year period mentioned in article 20 (time limit for exercise of powers of acquisition) of the Network Rail (Tackley Level Crossing) Order 202[ ]".

(6) In section 6(1)(b)(**e**) (notices after execution of declaration), for "section 15 of, or paragraph 6 of Schedule 1 to, the Acquisition of Land Act 1981" substitute "section 14A(3) of the Transport and Works Act 1992".

(7) In section 7(1)(a)(**f**) (constructive notice to treat), omit "(as modified by section 4 of the Acquisition of Land Act 1981)".

(8) In Schedule A1(**g**) (counter-notice requiring purchase of land not in general vesting declaration) omit paragraph 1(2).

(9) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 13 (application of Part 1 of the 1965 Act).

Rights under or over streets

15.—(1) Network Rail may enter upon and appropriate so much of the subsoil of, or airspace over, any street within the Order limits as may be required for the purposes of the development

(**a**) Schedule 2A was inserted by paragraph 3 of Schedule 17 to the Housing and Planning Act 2016 (c. 22).
(**b**) 1981 c. 66.
(**c**) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.
(**d**) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016.
(**e**) Section 6 was amended by paragraph 52(2) of Schedule 2 to the Planning (Consequential Provisions) Act 1990 (c. 11) and paragraph 7 of Schedule 15 to the Housing and Planning Act 2016.
(**f**) Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.
(**g**) Schedule A1 was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

and may use the subsoil or airspace for those purposes or any other purpose ancillary to its railway undertaking.

(2) Subject to paragraph (4), the power under paragraph (1) may be exercised in relation to a street without Network Rail being required to acquire any part of the street or any easement or right in the street.

(3) Subject to paragraph (5), any person who is an owner or occupier of land in respect of which the power of appropriation conferred by paragraph (1) is exercised without Network Rail acquiring any part of that person's interest in the land, and who suffers loss by the exercise of that power, is entitled to compensation to be determined, in case of dispute, as it were a dispute under Part 1 of the 1961 Act.

(4) Paragraph (2) does not apply in relation to –

(a) any subway or underground building; or

(b) any cellar, vault, arch or other construction in, on or under a street which forms part of a building fronting onto the street.

(5) Compensation is not payable under paragraph (3) to any person who is an undertaker to whom section 85 (sharing of cost of necessary measures) of the 1991 Act applies in respect of measures of which the allowable costs are to be borne in accordance with that section.

Temporary possession or use of land

Temporary use of land for development

16.—(1) Network Rail may in connection with the carrying out of the development—

(a) enter upon and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 4 (land of which temporary possession may be taken) for the purposes specified in relation to that land in column (3) of that Schedule relating to the development (or any of those works) specified in column (3) of that Schedule; and

(ii) subject to paragraph (10), any other land within the Order limits in respect of which no notice of entry has been served under section 11(**a**) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been made under section 4(**b**) (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981;

(b) remove any buildings and vegetation from that land;

(c) construct temporary works (including the provision of means of access) and buildings on that land;

(d) temporarily occupy and use airspace for the purposes of the operation of a crane in connection with the construction of the development; and

(e) construct any permanent works specified in relation to that land in column (3) of Schedule 4 or any other permanent mitigation works on that land.

(2) Not less than 14 days before entering upon and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land.

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article—

(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(**b**) Section 4 was amended by section 184 and 185 of, and paragraph 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016.

(a) in the case of land specified in columns (1) and (2) of Schedule 4 (land of which temporary possession may be taken), after the end of the period of one year beginning with the date of completion of the works specified in relation to that land in column (3) of that Schedule; or

(b) in the case of land referred in paragraph (1)(a)(ii), after the end of the period of one year beginning with the date of completion of the work for which temporary possession of the land was taken unless Network Rail has, before the end of that period, served a notice of entry under section 11 of the 1965 Act or made a declaration under section 4 of the Compulsory Purchase (Vesting Declarations) Act 1981.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Network Rail is not required to—

(a) replace a building removed in connection with the carrying out of the development; or

(b) restore the land on which any permanent works have been constructed under paragraph (1)(e).

(5) Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(6) Any dispute as to a person's entitlement to compensation under paragraph (5), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(7) Without affecting article 26 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(**a**) (further provisions as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage for which compensation is payable under paragraph (5).

(8) Where Network Rail takes possession of land under this article, it is not required to acquire the land or any interest in it.

(9) Section 13(**b**) (refusal to given possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 13 (application of Part 1 of the 1965 Act).

(10) Paragraph (1)(a)(ii) does not authorise Network Rail to take temporary possession of any land which it is not authorised to acquire under article 12 (power to acquire land).

Temporary use of land for maintenance

17.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any part of the development, Network Rail may—

(a) enter upon and take temporary possession of any land within the Order limits if such possession is reasonably required for the purpose of maintaining the development; and

(b) construct such temporary works (including the provision of means of access) as may be reasonably necessary for that purpose.

(2) Paragraph (1) does not authorise Network Rail to take temporary possession of—

(a) any house or garden belonging to a house; or

(b) any building (other than a house) if it is for the time being occupied.

(3) Not less than 28 days before entering upon and taking temporary possession of land under this article Network Rail must serve notice of the intended entry on the owners and occupiers of the land.

(**a**) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

(**b**) Section 13 was amended by sections 62(3) and 139 of, and paragraphs 27 and 28 of Schedule 13, and Part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(4) Network Rail may only remain in possession of land under this article for so long as may be reasonably necessary to carry out the maintenance of works for which possession of the land was taken.

(5) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land.

(6) Network Rail must pay compensation to the owners and occupiers of land of which temporary possession is taken under this article for any loss or damage arising from the exercise in relation to the land of the powers conferred by this article.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of the compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

(8) Without affecting article 26 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2) (further provision as to compensation for injurious affection) of the 1965 Act or under any other enactment in respect of loss or damage arising from the execution of any works, other than loss or damage for which compensation is payable under paragraph (6).

(9) Where Network Rail takes possession of land under this article, it is not required to acquire the land or any interest in it.

(10) Section 13 (refusal to give possession to the acquiring authority) of the 1965 Act applies to the temporary use of land under this article to the same extent as it applies to the compulsory acquisition of land under this Order by virtue of article 13 (application of Part 1 of the 1965 Act).

(11) In this article "the maintenance period" in relation to any work comprised within the development means the period of 5 years beginning with the date on which the work is opened for use.

Compensation

Disregard of certain interests and improvements

18.—(1) In assessing the compensation payable to any person on the acquisition from that person of any land under this Order, the tribunal must not take into account—

(a) any interest in land; or

(b) any enhancement of the value of any interest in land by reason of any building erected, works executed or improvement or alteration made on relevant land,

if the tribunal is satisfied that the creation of the interest, the erection of the building, the execution of the works or the making of the improvement or alteration was not reasonably necessary and was undertaken with a view to obtaining compensation or increased compensation.

(2) In paragraph (1) "relevant land" means the land acquired from the person concerned or any other land with which that person is, or was at the time when the building was erected, the works executed or the improvement or alteration made, directly or indirectly concerned.

Supplementary

Extinction or suspension of private rights of way

19.—(1) Subject to the provisions of this article all private rights of way over land subject to compulsory acquisition under this Order are extinguished—

(a) as from the date of acquisition of the land by Network Rail, whether compulsorily or by agreement; or

(b) on the date of entry on the land by Network Rail under section 11(1)(**a**) (powers of entry) of the 1965 Act,

whichever is the sooner.

(2) Subject to the provisions of this article in respect of land owned by Network Rail and required for the purposes of this Order all private rights of way are extinguished on the appropriation of the land for any of those purposes by Network Rail.

(3) Subject to the provisions of this article, all private rights of way over land subject to the compulsory acquisition of rights or the imposition of restrictive or other covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right—

(a) as from the date of the acquisition of the right by Network Rail, whether compulsorily or by agreement; or

(b) on the date of entry on the land by Network Rail under section 11(1) of the 1965 Act, whichever is the sooner.

(4) Subject to the provisions of this article, all private rights of way over land of which Network Rail takes temporary possession under this Order are suspended and unenforceable for as long as Network Rail remains in lawful possession of the land.

(5) Any person who suffers loss by the extinguishments or suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(6) This article does not apply in relation to any right of way to which section 271 (extinguishment of rights of statutory undertakers etc.) or 272(**b**) (extinguishment of rights of electronic communications code network operators) of the 1990 Act applies.

(7) In relation to any land within the scope of paragraphs (1) to (4), if Network Rail—

(a) prior to the relevant date, issues a notice; or

(b) at any time (whether before or after the relevant date or the coming into force of this Order), enters into an agreement that refers to this article with the person in whom the right of way in question is vested or to whom the right of way belongs,

then the provisions of paragraphs (1) to (4) will apply to that land subject to the provisions of that notice or agreement.

(8) If any such agreement as is mentioned in sub-paragraph (7)(b) is expressed to have effect also for the benefit of those deriving title from or under the person in or to whom the right of way in question is vested or belongs, it is effective in respect of the persons so deriving title, whether the title was derived before or after the making of the agreement.

(9) In paragraph (7), the relevant date is the date of appropriation of, entry onto, taking of temporary possession of, or completion of acquisition of the land.

Time limit for exercise of powers of acquisition

20.—(1) After the end of the period of 5 years beginning with the day on which this Order comes into force—

(a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 13 (application of Part 1 of the 1965 Act); and

(b) no declaration is to be executed under section 4 (execution of declaration) of the Compulsory Purchase (Vesting Declarations) Act 1981 as applied to the acquisition of

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(**a**) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land At 1981 (c. 67), section 3 of, and Part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measures 2006 (No. 1), sections 186(2), 187(2) and 188 of, and paragraph 6 of Schedule 14 and paragraph 3 of Schedule 16 to, the Housing and Planning Act 2016 (c. 220 and S.I. 2009/1307.

(**b**) Section 272 was amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003.

land by article 132 (application of the Compulsory Purchase (Vesting Declarations) Act 1981).

(2) The powers conferred by article 16 (temporary use of land for development) cease at the end of the period referred to in paragraph (1), except that nothing in this paragraph prevents Network Rail remaining in possession of land after the end of that period, if the land was entered and possession of it was taken before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Power to lop trees overhanging the development

21.—(1) Network Rail may fell or lop any tree or shrub near any part of the development, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

(a) from obstructing or interfering with the construction, maintenance or operation of the development or any apparatus used on the development; or

(b) from constituting a danger to persons using the development.

(2) In exercising the powers conferred by paragraph (1), Network Rail must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

Defence to proceedings in respect of statutory nuisance

22.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990(**a**) in relation to a nuisance falling within paragraph (g) of section 79(1)(**b**) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

(a) that the nuisance relates to premises used by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to the development and that the nuisance is attributable to the carrying out of the development which is being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61(**c**) (prior consent for work on construction sites); or

(b) that the nuisance is a consequence of the operation of the development and that it cannot reasonably be avoided.

(2) Section 61(9) of the Control of Pollution Act 1974(**d**) does not apply where the consent relates to the use of premises by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) In proceedings for an offence under section 80(4) (offence of contravention abatement notice) of the Environmental Protection Act 1990 in respect of a statutory nuisance falling within

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(**a**) 1990 c. 43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

(**b**) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

(**c**) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(**d**) 1874 c. 40.

section 79(1)(g) or (ga)(**a**) of that Act where the offence consists in contravening requirements imposed by virtue of section 80(1)(a) or (b)(**b**) of that Act, it is a defence to show that the nuisance—

(a) is a consequence of the construction, operation or maintenance of the development; and

(b) cannot reasonably be avoided.

(4) The provisions of this article do not affect the application to the development of section 122 (statutory authority as a defence to actions in nuisance, etc.) of the Railways Act 1993(**c**) or any rule of common law having similar effect.

Statutory undertakers etc.

23. Schedule 5 (provisions relating to statutory undertakers, etc.) have effect.

Certification of plans etc.

24. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference and the land and rights of way plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference and the land and rights of way plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

25.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

(a) by post;

(b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission; or

(c) subject to compliance with the requirements in paragraph (9) by publishing them on a website maintained by or on behalf of Network Rail.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(**d**) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

(a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and

(b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

(a) addressing it to that person by name or by the description of "owner", or as the case may be "occupier", of the land (describing it); and

(b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(**a**) Section 79(1)(ga) was inserted by section 2(1) and (2)(b) of the Noise and Statutory Nuisance Act 1993.
(**b**) Section 80(1) was amended by section 86 of the Clean Neighbourhoods and Environment Act 2005.
(**c**) 1993 c. 43.
(**d**) 1978 c. 30.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a note or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

(a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and

(b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

(9) The requirements referred to in paragraph (1)(c) are that the person upon whom the notice or other documents is being served or sent is notified in writing of—

(a) the publication of the relevant document on a website;

(b) the address of the website;

(c) the place on the website where the document may be accessed and how it may be accessed;

(d) details of where and when copies of documents may be inspected or viewed in an electronic form;

(e) details of where and when copies of documents may be obtained; and

(f) any charge that will be levied for copies made of any document available for inspection or viewing.

(10) This article does not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

26. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

27. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.

Signed by authority of the Secretary of State

Natasha Kopala
Head of the Transport and Works Act Orders Unit
Department for Transport

Date

SCHEDULES

SCHEDULE 1

Article 6

REDESIGNATION OF HIGHWAY

(1) *Area*	*(2)* *Highway*	*(3)* *Current designation*	*(4)* *Proposed designation*
In the County of Oxfordshire, District of West Oxfordshire	Public footpath 379/16/20 between points B1 and B2	Public footpath	Public bridleway

SCHEDULE 2

Article 5

STREET TO BE TEMPORARILY STOPPED UP

(1) *Area*	*(2)* *Highway/Street to be temporarily stopped up*	*(3)* *Extent of temporary stopping up*
In the County of Oxfordshire, District of West Oxfordshire	Public bridleway 379/2/10, save for access to Tackley Estate's adjacent fields	Between points A1 and A2
In the County of Oxfordshire District of West Oxfordshire	Public footpath 379/16/20, save for access to Nos. 72, 74, 76 and 78 Nethercote Road and to Tackley Estate's adjacent fields	Between points B1 and B2

SCHEDULE 3

Article 8

CLOSURE AND REPLACEMENT OF LEVEL CROSSING

(1) *Area*	*(2)* *Level crossing to be discontinued*	*(3)* *Right of way to be stopped up*	*(4)* *New right of way to be substituted*
County of Oxfordshire, District of West Oxfordshire	The level crossing known as Tackley	Bridleway 379/2/10 between points Z1 and Z2	New 4.5m wide bridleway (4m surfaced) between point marked Commencement of New Bridleway and point marked Termination of New Bridleway

SCHEDULE 4

Article 16

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) *Area*	*(2)* *Number of land shown on the land and rights of way plans*	*(3)* *Purpose for which temporary possession may be taken*
In the County of Oxfordshire, District of West Oxfordshire	0001	Construction compound, laydown and storage, site offices and accommodation facilities, together with access.
	0003	Access for worksite, construction compound and delivery of materials
	0003a	Access for worksite, construction compound and delivery of materials
	0003b	Access for worksite, construction compound and delivery of materials
	0004	Access for worksite and construction
	0007	Access for worksite and construction
	0009	Construction compound, laydown and storage, site offices and accommodation facilities, together with access.
	0011	Access for worksite, construction compound, construction and delivery of materials
	0012	Access for worksite, construction compound, construction and delivery of materials

SCHEDULE 5

Articles 8 and 23

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

1.—(1) Sections 271 to 274(**a**) (extinguishment of rights of statutory undertakers etc. and power of statutory undertaker etc. to remove or re-site apparatus) of the 1990 Act apply in relation to any land acquired or appropriated by Network Rail under this order subject to the following provisions of this paragraph; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282(**b**), which provide for the payment of compensation) have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the

(**a**) Sections 271 to 273 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).
(**b**) Section 279(3) was amended by paragraph 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.

1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

(a) the owner or occupier of premises the drains of which communicated with that sewer; or

(b) the owner of a private sewer which communicated with that sewer,

is entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer communicate with any other public sewer or with a private sewerage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that paragraph, do not have effect in relation to apparatus as respects which sub-paragraph (2) or Part 3 of the 1991 Act applies.

(6) Nothing in this paragraph affects the provisions of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which the Order is made.

(7) In this paragraph—

"public communications provider" has the same meaning as in section 151(1) of the Communications Act 2003(**a**); and

"public utility undertaker" has the same meaning as in the 1980 Act(**b**).

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under article 5 (temporary stopping up, etc. of streets) or, article 8 (closure of level crossings) any statutory utility whose apparatus is under, in, upon, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under articles 5, 8 any statutory utility whose apparatus is under, in, upon, over, along or across the street may, and if reasonably requested to do so by Network Rail must—

(a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory utility may reasonably determine and have power to place it; or

(b) provide other apparatus in substitution for the existing apparatus and place it in that other position.

(3) Subject to the following provisions of this paragraph, Network Rail must pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

(a) the execution of the relocation works required in consequence of the stopping up of the street; and

(b) the doing of any other works or thing rendered necessary by the execution of the relocation works.

(4) If in the course of the execution of relocation works under sub-paragraph (2)—

(a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or

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(**a**) 2003 c. 21.

(**b**) The definition of "public utility undertakers" was amended by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15) and section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29).

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of sub-paragraph (4)—

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

(b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

(7) Sub-paragraphs (3) to (6) do not apply where the development constitute major transport works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act, but instead—

(a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and

(b) the allowable costs are to be borne by Network Rail and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) Nothing in this paragraph affects the provisions of any enactment or agreement regulating the relations between Network Rail and a statutory utility in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which the Order is made.

(9) In this paragraph—

(a) "apparatus" has the same meaning as in Part 3 of the 1991 Act;

(b) "relocation works" means works executed, or apparatus provided, under sub-paragraph (2); and

(c) "statutory utility" means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in paragraph 1(7).

EXPLANATORY NOTE

(This note is not part of the Order)

This Order confers powers on Network Rail to close the level crossing known as Tackley level crossing and for the permanent acquisition of and temporary use of land in connection with the closure of Tackley level crossing, the provision of a footbridge with lifts at Tackley railway station and the construction of a bridleway and temporary construction compounds.

The Order authorises a footpath redesignation and other rights in land.

A copy of the land and rights of way plans and the book of reference referred to in the Order may be inspected, on request, at the offices of Network Rail Infrastructure Limited at Network Rail National Records Centre, Unit 5, Audax Road, Clifton Moor, York YO30 4US.