

TRANSPORT AND WORKS ACT 1992

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

**THE NETWORK RAIL (STALYBRIDGE TO DIGGLE
(SADDLEWORTH) ENHANCEMENTS) ORDER**

DOCUMENT NR03: EXPLANATORY MEMORANDUM

Rule 10(2)(b)

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ENHANCEMENTS) ORDER**

Explanatory Memorandum

Rule 10(2)(b)

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

Application for the Order has been made by Network Rail Infrastructure Limited ("Network Rail"). The Order would confer powers for the construction, maintenance and operation of works on the Transpennine line between Stalybridge and Diggle (Saddleworth), including works for the electrification of the railway between Stalybridge and Diggle (Saddleworth) for the purposes of increasing capacity and improving journey time and performance reliability of railway services on the Transpennine line both between Stalybridge and Diggle (Saddleworth) and between Manchester, Leeds and York ("the project").

The Order would authorise works to upgrade the operation of the existing railway between Stalybridge and Diggle (Saddleworth), including the construction of a new station at Mossley, railway electrification works and bridge reconstruction works. The Order also confers powers to close and replace existing level crossings on the railway between Stalybridge and Diggle (Saddleworth) and powers in connection with the construction and operation of the railway.

The Order authorises Network Rail to acquire land, the subsoil and airspace of land, interests in land, including the imposition of restrictive covenants, and to temporarily acquire and temporarily use land for the purposes of the works authorised by the Order and for the provision of railway infrastructure on the railway between Stalybridge and Diggle (Saddleworth) for which Network Rail has permitted development rights.

The draft Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006 No. 1954) ("the model clauses"), but on

occasion it departs from them. Where there is a material departure from the model clauses, an explanation is provided.

PART 1

PRELIMINARY

Part 1 contains preliminary provisions

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

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

Paragraph (2) departs from the model clauses by including reference to the imposition of restrictive covenants for the benefit of land which is acquired under this Order or otherwise comprised in Network Rail's undertaking. The power to impose restrictive covenants has precedent in, for example, the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780), the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067).

A new Paragraph (3) explains that references to numbered plots are references to plot numbers on the deposited plans. This has been added to provide clarity and has precedent in the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027), the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446), the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Article 3 (*Incorporation of the Railway Clauses Acts*) incorporates, subject to amendments, various provisions in the Railway Clauses Consolidation Act 1845 (c. 20) and the Railways Clauses Act 1863 (c. 92). The article omits those provisions referred to in the model clauses that are not relevant to this Order.

Article 4 (*Application of the 1991 Act*) provides for the application of the New Roads and Street Works Act 1991 (c. 22) to the temporary stopping up, temporary alteration or temporary diversion of streets under article 13 (*power to alter layout etc. of streets*) and article 14 (*temporary stopping up of streets*) and the carrying out of street works under article 10 (*power to execute street works*), even if no street works (within the meaning of the 1991 Act) are being carried out. Article 4(2) is not a model clause but is well precedented, for example see article 3 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 4 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446), article 4 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) and article 4 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order

2022 (S.I. 2022 No. 1067). The effect of the amendment is to increase the number of provisions contained in the New Road and Street Works Act 1991 which are not to have effect in relation to the powers exercisable under the terms of this Order.

Article 5 (*Disapplication of legislative provisions*) is not in the model clauses. Paragraph (1)(a) provides for the disapplication of additional consents which would otherwise be required from the Environment Agency under the Environmental Permitting (England and Wales) Regulations (S.I. 2016 No. 1154) for a consent to operate a regulated facility in relation to a flood risk activity. This provision has replaced the consenting requirements under section 109 of the Water Resources Act 1991 (c. 57) to erect, construct or carry out works to any structure in a watercourse which is part of a main river. In order to provide certainty therefore that the project can proceed in relation to works to be authorised by the Order in, over or adjacent to main rivers, such as the construction of railway electrification works on the existing Uppermill Viaduct MVL3/31 which crosses over the River Tame, the Order disapplies the requirements for in-principle consent. Instead the Order provides for the approval of detailed plans for the works in the protective provisions for the Environment Agency and lead local flood authorities in Parts 3 and 4 of Schedule 17 (*protective provisions*). This approach to disapplication and the approval of details through protective provisions is preceded in articles 5 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446), the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923), the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) and the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067). This approach has also been accepted and adopted in Schedule 21 of both the High Speed Rail (London – West Midlands) Act 2017 (c. 7) and the High Speed Rail (West Midlands – Crewe) Act 2021 (c. 2).

Paragraphs (1)(b) and (e) provide for the disapplication of additional consents which would otherwise be required from the drainage authorities under the Land Drainage Act 1991 (c. 59). Under section 23 of the Land Drainage Act 1991 there are requirements for the consent to erect obstructions to the flow of an ordinary watercourse and for approval under byelaws made or deemed to be made under section 66 of that Act. These are consents for activities in relation to ordinary watercourses such as improvements to drainage facilities which are a necessary part of the project. In order to provide certainty therefore that the project can proceed, the Order disapplies the requirements for in-principal consent. Instead the Order provides for the approval of detailed plans of the works in the protective provisions for the Environment Agency and lead local flood authorities in Parts 3 and 4 of Schedule 17 (*protective provisions*). These disapplications have precedent in articles 5 of the Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017 No. 1150), the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446), the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and the Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024 No. 526).

Paragraphs (1)(c) and (d) provide for the disapplication of requirements to obtain approvals under the Flood Management Act 2010 (c. 29). These are consents for matters which are covered in the protective provisions provided in Parts 3 and 4 of Schedule 17 (*protective provisions*). Paragraph (1)(c) removes the restrictions on

removing designated features in relation to works authorised under the Order. Paragraph (1)(d) disapplies the requirement to provide approval for the drainage systems constructed under the powers of the Order. The requirement to obtain this consent is not required in relation to development consent orders under the Planning Act 2008 (Paragraph 7(3), Schedule 3, Flood and Water Management Act 2010). These disapplications have precedent in articles 5 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and the Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024 No. 526). This approach to disapplication has also been accepted and adopted in Schedule 21 of both the High Speed Rail (London – West Midlands) Act 2017 (c. 7) and the High Speed Rail (West Midlands – Crewe) Act 2021 (c. 2).

Paragraph (3) provides for the disapplication of certain demolition controls under the Building Act 1984 (c. 55) to demolitions carried out pursuant to the powers in the Order. These are controls on demolition activities which are a necessary part of the project. This includes the demolition of existing buildings which are required to be demolished to enable the provision of the working sites and compounds which are necessary to enable Network Rail to deliver the scheduled works and the other works to be authorised by the Order. The ability to deliver the scheduled works and the other works to be authorised by the Order form the core purposes of the project to be authorised by the Order. Therefore, in order to provide certainty that the core purposes of the project can proceed and be delivered, the Order disapplies the requirements for further notice of demolitions authorised by the Order to be given to the local authority under section 80(2)(b) of the Building Act 1984. In addition, the Order disapplies the requirements for further details on the carrying out of demolitions authorised by the Order to be provided pursuant to sections 81 and 82 of the Building Act 1984. Instead the demolitions authorised by the Order, and the related request for deemed planning permission (see application document NR11), will be managed and controlled through the terms of the Code of Construction Practice for this project which is to be mandated through a proposed planning condition to the request for deemed planning permission. Accordingly by virtue of such planning controls further controls are not required. The disapplication of these controls in the Building Act 1984 in relation to demolitions which are permitted under statutory authority is preceded in article 5 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284) and the High Speed Rail (West Midlands-Crewe) Act 2021 (c. 2) in paragraph 6 of Schedule 22.

Article 6 (Water Abstraction) is not in the model clauses. Paragraph (1) provides for the disapplication of the additional consents which would otherwise be required under section 24(1) of the Water Resources Act 1991 (c. 57). Under section 24(1) further consent would be required for the abstraction and impounding of water required in order to enable the construction of key elements of the project including new railway infrastructure, station works at Mossley and the provision of working sites. In order to provide certainty therefore that the construction of the authorised works can proceed, the Order disapplies the requirements for in-principal consent where the abstraction of water is required for purposes of, or in connection with, the construction of the authorised works. Paragraph (2) relates to loss or damage caused by the abstraction of water and section 48A(1) of the Water Resources Act 1991 which contains a duty not to cause loss or damage. Paragraph (2) provides for

the disapplication of this duty in relation to the abstraction of water in connection with the exercise of the powers conferred by the Order. However, paragraph (3) provides that if Network Rail does cause loss or damage and the conditions around this would have breached the duty in section 48A(1), then Network Rail must compensate the affected party. Paragraph (4) states how such compensation should be determined. Paragraph (5) disapplies the prohibition under section 48A(5) of the Water Resources Act 1991 on making claims in respect of loss or damage. This allows for claims for compensation to be made under this article and the other provisions of this Order listed in this article.

This approach to the disapplication of the Water Resources Act 1991 is precented in the Croxley Rail Link Order 2013 (S.I. 2013 No. 1967).

Article 7 (*Application of local railway enactments*) is not in the model clauses. The purpose of Article 7 is to provide for the disapplication and repeal of certain provisions in the local railway legislation relating to original Stalybridge to Diggle (Saddleworth) railway that is subject to the operation of this Order. Article 7 makes provision for the disapplication of provisions in the local railway legislation relating to the construction and maintenance of bridges carrying public roads over the railway. These provisions are disapplied in relation to works executed under this Order so to enable such bridge works to be constructed and maintained in the manner prescribed by this Order (see Part 2 below and provisions regarding the construction of works) and in accordance with the requirements of this Order relating to the construction and maintenance of bridges carrying public roads over or under the railway (Articles 16 (*construction and maintenance of new or altered streets*) and 17 (*construction of bridges*)).

The approach to such disapplications is precededented in TWA Orders such as the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006 No. 3117), the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780) and the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067).

PART 2

WORKS PROVISIONS

Principal Powers

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

Article 8(3) authorises the construction of the works described in column (3) of Schedule 2 (*acquisition of certain lands for ancillary works*) on the land described in columns (1) and (2) of that Schedule. Article 8(4) authorises the construction of the works described in column (3) of Schedule 9 (*acquisition of new rights and imposition of restrictive covenants only*) on the land described in columns (1) and (2) of that Schedule. Article 8(5) authorises the construction of works described in Article

28(4)(a) and (b) (*power to acquire ground anchor rights*) on the land described in columns (1) and (2) of Schedule 12 (*power to acquire ground anchor rights*).

Article 8 also provides for the construction and maintenance of works necessary or expedient for the purposes of the authorised works. These ancillary works are specified in Paragraph (6) and include, in an extension to the model clauses, descriptions of the types of works which it is envisaged are likely to be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works authorised by this Order. Such variation to the model clauses has precedent in article 5 of the Docklands Light Railway (Capacity Enhancement) Order 2005 (S.I. 2005 No. 3105), in article 5 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027), article 7 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780), article 6 of the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923), article 6 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) article 6 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), article 8 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and article 7 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Article 8(8) provides that the carrying out or maintenance of works outside the limits of deviation may be done only on land which is specified in columns (1) and (2) of Schedule 2 (*acquisition of certain lands for ancillary works*), columns (1) and (2) of Schedule 9 (*acquisition of new rights and imposition of restrictive covenants only*), on land specified in columns (1) and (2) of Schedule 12 (*power to acquire ground anchor rights*) for the purposes specified in relation to that land in article 28(4)(a) and (b) and columns (1) and (2) of Schedule 13 (*land of which temporary possession may be taken*) for the purposes specified in relation to that land in column (3) of each of these Schedules.

Article 8(9) provides that Network Rail may carry out and maintain (within the Order limits) landscaping and other works to mitigate the effect of the construction, maintenance or operation of the authorised works and works for the benefit or protection of land affected by the authorised works. Such provision is commonly included in Orders authorising railways, including article 5 of the Network Rail (Thameslink 2000) Order 2006 (S.I. 2006 No. 3117) article 6 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), article 8 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and article 7 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Article 9 (*Power to deviate*) provides for limits within which Network Rail can deviate in the construction of the proposed works and in subsequently maintaining those works.

Streets

Article 10 (*Power to execute street works*) confers authority on Network Rail to interfere with, and execute works in or under, the streets specified in Schedule 3 (*streets subject to street works*) within the Order limits for the purposes of the proposed works.

Article 11 (*Power to keep apparatus in streets*) authorises Network Rail for the purposes of the construction of the authorised works to place, relocate and maintain equipment and apparatus including foundations, road islands, bollards, substations, electric lines and closed circuit television monitoring. The purpose of this provision, in addition to the powers to be conferred by Article 10, is to enable Network Rail to alter, move, remove, place and maintain further and additional equipment and apparatus in streets that is required for the construction and operation of the scheduled works such as works to reconstruct highway bridges over the railway and the associated new highways over such bridges and the construction of the new Mossley Station such as the works required within streets to facilitate and manage new access arrangements to the new station. The provision is not included in model clauses but precedent is provided by article 7 of the Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007 (S.I. 2007 No. 2297), article 10 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044) and article 7 of the London Overground (Barking Riverside Extension) Order 2017 (S.I. 2017 No 830).

Article 12 (*Stopping up of streets*) provides for Network Rail to permanently stop up the streets specified in Schedule 4 (*streets to be stopped up for which a substitute is to be provided*). Paragraph (2) provides that no street specified in columns (1) and (2) of Schedule 4 is to be stopped up unless Network Rail has provided either the new street specified for it in Schedule 4 or a suitable temporary alternative route until the opening of the new street specified in column (4) of Schedule 4. Paragraph (3) provides for all rights of way along any street stopped up to be extinguished, and allows Network Rail to use the stopped up street for the purposes of its railway undertaking. Paragraph (4) provides for payment of compensation to any person suffering loss of any private right of way under this article. In a departure from the model clauses, Paragraph (6) provides that paragraphs (10) to (15) of article 19 (*which provide for creation of new public rights of way*) will also apply in the same manner in relation to any replacement footpath or bridleway specified in column (4) of Schedule 4 as they apply to replacement rights of way specified in column (4) of Part 1 of Schedule 8. This departure has precedent in article 13(7) of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114).

Article 13 (*Power to alter layout etc. of streets*) is not found in the model clauses but permits Network Rail to alter the layout of streets in order to accommodate the authorised works, with the consent of the street authority (such consent not to be unreasonably withheld) or, in the case of alterations specified in Schedule 5 (*streets subject to alteration of layout*), without such consent. Alterations in street layout are required for a number of purposes set out in Paragraph (2) and Schedule 5. A street authority which fails to notify Network Rail of its decision in respect of an application for consent within 28 days of the application being made is deemed to have given its consent. This provision for deemed consent avoids unnecessary delays to the authorised project. A similar time limit has been inserted in the approvals processes elsewhere in this Order. This article has precedent in article 9 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780), article 8 of the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923) article 11 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), article 15 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and article 11 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Article 14 (*Temporary stopping up of streets*) provides for the temporary stopping up of streets. In an extension to the model clauses, Paragraph (2) confers a power on Network Rail to use any street stopped up under the powers conferred by this article as a temporary working site. Such provision has precedent in article 9(2) of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446), article 14(2) of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), article 16(2) of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067), article 11(2) of the Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024 No. 526) and article 12(2) of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284). Where the street is specified in Schedule 6 (*streets to be temporarily stopped up*), Network Rail is obliged to merely consult the relevant street authority. This is on the basis that such stoppings up will have been considered in the application for the Order. If Network Rail wishes to temporarily stop up streets which are not so specified in Schedule 6, Paragraph (5)(b) provides that Network Rail will need to obtain the consent of the relevant street authority, which may attach reasonable conditions to any such consent but may not unreasonably withhold consent. In an extension to the model clauses, a time limit of 28 days is given, after which a street authority which fails to respond to an application for consent is deemed to have given its consent or if it refuses consent without giving any grounds for its refusal it is deemed to have given its consent. The provision of such deemed consent avoids unnecessary delays to the authorised project. This has precedent in article 9 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 14 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), article 16 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067), article 11 of the Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024 No. 526) and article 12 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Article 15 (*Access to works*) gives Network Rail the power to provide or improve means of access at locations shown on the deposited plans and given in Schedule 7 (*access to works*). In addition, Network Rail, may, with the approval of the highway authority (such approval not to be unreasonably withheld), provide or improve means of access at locations within the Order limits as Network Rail may reasonably require. For the reasons given above, in an extension to the model clauses an additional Paragraph (2) has been inserted providing that if a highway authority does not respond to an application for consent within 28 days of the application being made it is deemed to have given its consent. This has precedent in article 10 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No. 2027), article 10 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446), article 16 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), article 17 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067), article 12 of the Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024 No. 526) and article 13 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Article 16 (*Construction and maintenance of new or altered streets*) Paragraphs (1) and (3) make provision for new streets, with paragraphs (2) and (3) making provision for altered or diverted streets, to be completed to the reasonable satisfaction of the highway authority (or street authority in the case of alterations and diversions) and for

their maintenance by Network Rail for a period of 12 months, and thereafter the relevant authority.

Paragraph (3) excludes from the scope of Paragraphs (1) and (2) the structure of any bridge or tunnel carrying a street over or under Network Rail's railway as Network Rail will be responsible for maintaining the structure of any such railway bridges or tunnels beyond the initial period of 12 months identified in Paragraphs (1) and (2). In an extension to the model clause Paragraph (3) confirms that its application does not affect Network Rail's responsibility to maintain the surface of any highway under or over which the scheduled works are constructed, or the immediate approaches to any such highway, which instead will continue to be governed by the provisions of Paragraphs (1) and (3). This extension to the model clauses has precedent in article 12 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011 (S.I. 2011 No. 1072), article 13 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780), article 18 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and article 14 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Article 17 (*Construction of bridges*) provides for any bridges for carrying a highway constructed under the Order to be so constructed in accordance with plans and specifications to be approved by the highway authority (which approval shall not be unreasonably withheld). For the reasons given above, in an extension to the model clauses Paragraph (2) has been inserted in addition to the model clauses providing that if the highway authority does not respond within 28 days, or does not give any reasons for refusing consent, approval is deemed to have been given. This is preceded in article 16 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780), article 18 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), article 19 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067), article 14 of the Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024 No. 526) and article 15 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Article 18 (*Agreements with street authorities*) allows Network Rail to enter into agreements with street authorities relating to any street created or affected under this Order. These agreements would allow Network Rail and the street authority to agree points such as who is responsible for undertaking certain works affecting streets under this Order, a time period for the completion of the works and setting out the terms of any payment which may be made. The model clause is extended (Paragraph (1)(b)) so as to include agreements relating to the strengthening, improvement, repair or reconstruction of any street under powers conferred by this Order. This extension is preceded in article 17 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), article 20 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067), article 15 of the Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024 No. 526) and article 16 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Level Crossings

Article 19 (*Replacement and closure of footpath level crossings*) this article is not found in the model clauses but is preceded in article 16 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679) and article 9 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114). This article authorises the stopping up of the footpaths which cross the railway on the level which are specified in Part 1 and Part 2 of Schedule 8 (*replacement and closure of footpath level crossings*). Network Rail may only exercise the powers in relation to the footpath listed in Part 1 of Schedule 8 (level crossings for which a substitute is to be provided) once it has provided the new substituted right of way (as identified in column (4) of Part 1 of Schedule 8) for the footpath to be stopped up. Once Network Rail has provided the substituted right of way (as identified in column (4) of Part 1 of Schedule 8) it will become a public right of way and the provisions of the Highways Act 1980 relating to compensation apply. Network Rail may only exercise the powers in relation to the footpath listed in Part 2 of Schedule 8 (level crossings for which no substitute is to be provided) once it has provided the footpath enhancement works (as defined in paragraph (16)) to the existing right of way specified in column (4) of Part 1 of Schedule 8.

Supplemental Powers

Article 20 (*Discharge of water*) enables Network Rail to discharge water into any watercourse, public sewer or drain in connection with the construction, operation or maintenance of the proposed works with the approval and (if provided) superintendence of the person to which the watercourse, public sewer or drain belongs (such approval may be subject to reasonable terms and conditions but must not be unreasonably withheld). The model clauses are extended so to also cover operation. In addition, the model clauses are extended so as to provide that any relevant person who fails to respond to an application for consent or approval within 28 days of the application being made is deemed to have given its consent. These extensions to the model clauses have precedent in the same context in article 19 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679), article 13 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 17 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044), article 16 of the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923), article 22 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067), article 16 of the Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024 No. 526) and article 19 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

In Paragraph (7) the wording of the model clauses has been updated to refer to the environmental permitting regime introduced by the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016 No. 1154).

Article 21 (*Protective works to buildings, roads and apparatus of a statutory undertaker*) permits Network Rail to carry out certain protective works (as defined in Paragraph (11)) before, during or after construction of the authorised works (up to a period of 5 years after that part of the authorised works is opened for use) to any building, and in an extension to the model clauses, any road or any apparatus of a statutory undertaker within the Order limits or the protective works limits which Network Rail consider necessary or expedient. This will allow Network Rail to carry

out any protective works that may be required to buildings, roads and apparatus of a statutory undertaker. This extension is required for the purposes of this project due to the significant extent to which the scheduled works to be authorised by the Order relate to the reconstruction of bridges carrying existing highways over the railway, the delivery of which will create interfaces with the wider existing road network and apparatus of statutory undertakers. Accordingly, this extension is required to ensure that Network Rail can undertake protective works to such roads and apparatus which are necessary or expedient as a result of the proposed works. This article as extended from the model clauses is preceded in article 20 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679), article 14 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 18 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044), article 23 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and article 20 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

The protective works limits are defined in Article 2(1) and represent land over which Network Rail requires entry pursuant to this article to carry out protective works. This approach is preceded in the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067), see articles 2(1) and 23.

Provision is made in the article for surveys and notice, and the payment of compensation.

The protective works as defined in Paragraph (11) are preceded in article 15 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 20 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), article 23 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and article 20 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Article 22 (*Power to survey and investigate land*) confers upon Network Rail power (upon notice to every owner and occupier of that land) to survey and investigate land within the Order limits or the protective works limits and to make excavations, trial holes and boreholes and carry out ecological or archaeological investigations and place on, leave on and remove apparatus. It makes provision for the payment of compensation. In a departure from the model clauses paragraph (2) has been included so to provide that in connection with any apparatus which may be placed or left on land under the powers conferred by paragraph (1)(d), Network Rail may, subject to payment, connect to and use any electrical supply on the land for the purposes of powering such apparatus. This provision is necessary so as to enable Network Rail to power and operate apparatus that is required for the purposes of carrying out the necessary surveys and investigations of land and for the making of trial holes or boreholes on land. Paragraph (2) has precedent in article 19(2) of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044).

Approval (which may not be unreasonably withheld) for the making of trial holes is required, in the case of a carriageway or footway from the highway authority, or in the case of a private street, from the street authority. For the reasons given above in a

departure from the model clauses a highway or street authority which fails to respond to an application for consent within 14 days of the application being made is deemed to have given its consent. Such provision has precedent in the same context in article 15 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 15 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No.2027) and article 16 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446), article 24 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067), article 17 of the Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024 No. 526) and article 21 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Article 23 (*Temporary closure of, and works in, the Huddersfield Narrow Canal*) in an extension to the model clauses Article 23 confers upon Network Rail power to temporarily close and carry out the temporary activities listed in Paragraph (1) within the relevant parts of the Huddersfield Narrow Canal within the Order limits for the purposes of the construction of the authorised works. Network Rail is required to restrict the closure or obstruction to the minimum necessary and compensation is payable to any person who suffers loss by reason of the suspension or interruption of any right under this article. This provision is not within the model clauses but follows provisions such as article 16 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 20 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780) and article 25 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067).

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

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

Article 24 (*Power to acquire land*) confers on Network Rail powers of compulsory acquisition of land within the limits of deviation and identified on the deposited plans and described in the book of reference, for the purposes of the authorised works. It also authorises the compulsory acquisition of land specified in Schedule 2 (*acquisition of certain lands for ancillary works*) for the purpose specified in that Schedule. It also provides for any land so acquired to be used for other purposes connected with or ancillary to the railway undertaking. In an extension of the model clauses Paragraph (3) provides that this article does not apply to land with the protective works limits (see also Article 21) and land specified in Schedule 14 (*temporary use of land for access*) (see also Article 33). This provision has precedent in article 22 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) and article 26 of the Network Rail

(Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067).

Article 25 (*Application of Part 1 of the 1965 Act*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965 (c. 56). This provision is altered from the model clause to reflect changes made to the 1965 Act by the Housing and Planning Act 2016 (c. 22) as applied in Transport and Works Act Orders such as the Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017 No.1150) (article 19), Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) (article 18) the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) (article 23), the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) (article 27) and the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284) (article 23). This provisions has also been updated to reflect changes made to the 1965 Act by the Levelling-up and Regeneration Act 2023 (c. 55). Paragraph (5) provides for a revised notice period of 1 month instead of 3 months for the service of Notice of Entry in cases where that notice only relates to entry onto land subject to the acquisition of an easement or other right so to exercise such an easement or right. This revised period would not apply to cases where the Notice of Entry relates to taking possession of land that is subject to acquisition. The Order would permit and in certain cases limit Network Rail to acquiring the lesser interest of rights in land. In such cases a lesser notice period is appropriate where the Notice of Entry is limited to only enabling the exercise of an easement or right acquired over land. This approach has precedent in the orders referred to above and has been accepted as appropriate in the same context in Schedule 6 of the High Speed Rail (London – West Midlands) Act 2017 (c. 7) and Schedule 7 of the High Speed Rail (West Midlands – Crewe) Act 2021 (c. 2).

Article 26 (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66) and provides for that Act to have effect subject to certain modifications. It gives Network Rail the option to acquire land by this method rather than through the notice to treat procedure. This provision is altered from the model clause to reflect changes made to the 1981 Act by the Housing and Planning Act 2016 (c.22) as applied in Transport and Works Act Orders such as the Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017 No.1150) (article 20), Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) (article 19), Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) (article 24), the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) (article 28) and the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284) (article 24). This provisions has also been updated to reflect changes made to the 1981 Act by the Levelling-up and Regeneration Act 2023 (c. 55).

Article 27 (*Power to acquire new rights*) Paragraph (1) enables Network Rail to acquire rights over land it is authorised to acquire under Article 24 (*power to acquire land*) by the creation of new rights as well as by acquiring rights already in existence.

Paragraph (2) departs from the model clauses in providing that, in the case of land specified in columns (1) and (2) of Schedule 9 (*acquisition of new rights and*

imposition of restrictive covenants only), Network Rail's compulsory acquisition powers are limited to the acquisition of such new rights and the imposition of restrictive or other covenants as may be required for the purpose specified in relation to that land in column (3) of Schedule 9. In relation to such land the possibility of outright acquisition is not required. This approach to limiting the scope of acquisition is well preceded in a number of orders including article 21 of the Network Rail (Werrington Grade Separation) Order 2018 (S.I. 2018 No. 923), article 20 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446), article 25 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) and article 29 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067).

Following paragraph (2), Paragraph (3) also departs from the model clauses in providing that, in the case of land specified in columns (1) and (2) of Part 1 and Part 2 of Schedule 10 (*imposition of restrictive covenants only*), Network Rail's compulsory acquisition powers are limited to the imposition of restrictive or other covenants either over land only or in the airspace over land only as may be required for the purpose specified in relation to that land in columns (3) of Part 1 and Part 2 of Schedule 10. In relation to such land the possibility of outright acquisition is not required. This approach to limiting the scope of acquisition to the imposition of restrictive covenants only follows the approach adopted by article 29(5) of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067).

Paragraph (4) provides that where Network Rail needs only to acquire rights over land or to impose a restrictive covenant over land, it is not obliged to acquire any greater interest in that land.

Schedule 11, which is introduced by Paragraphs (6) and (7), makes modifications of relevant enactments concerning compensation and compulsory powers in relation to such acquisitions. Schedule 11 deviates from the model clauses to reflect changes made to the compulsory acquisition process by the Housing and Planning Act 2016 (c.22) as applied in recent Transport and Works Act Orders such as the Network Rail (Buxton Sidings Extension) Order 2017 (S.I. 2017 No.1150) (Schedule 7), Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) (Schedule 6), the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) (Schedule 13) and the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) (Schedule 12). Schedule 11 also deviates from the model clauses in order to make the required modifications of relevant enactments concerning compensation and compulsory powers in relation to such acquisitions where such acquisitions are undertaken by Network Rail through the general vesting declaration procedure (as applied to the Order by article 26) rather than through the notice to treat procedure. These amendments reflect the same amendments which the model clauses already provide for when such acquisitions are undertaken through the notice to treat procedure.

Paragraphs (6) and (7) are based on precedent found in article 18 of the Network Rail (Ipswich Chord) Order 2012 (S.I. 2012 No. 284), article 24 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780), article 25 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), article 29 the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements)

Order 2022 (S.I. 2022 No. 1067), article 21 of the Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024 No. 526) and article 25 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284). These paragraphs provide for the acquisition of rights by an undertaker (as defined by Paragraph (8)), rather than Network Rail, in circumstances where land is required for the diversion or relocation of their apparatus and the Secretary of State gives written consent. The issue here is that the dominant tenement to be benefitted by such rights is the undertaking of the undertaker rather than Network Rail's land, and it is therefore necessary for them rather than Network Rail to exercise the Order powers to acquire rights. The exercise of such powers by an undertaker is subject to the same restrictions, liabilities and obligations (including the payment of compensation) as would apply under this Order if that power were exercised by Network Rail.

Article 28 (*power to acquire ground anchor rights*), is not a model clause. This article limits Network Rail's powers of compulsory acquisition under the Order to the acquisition of ground anchor rights in relation to the land specified in columns (1) and (2) of Schedule 12 (*power to acquire ground anchor rights*). Ground anchor rights are defined in Paragraph (4) and include works to strengthen and stabilise Network Rail's existing railway undertaking in consequence of the demolition of Wright's Overbridge MVL3/23 and to maintain those works. In order to carry out such maintenance, and to protect any works carried out, Network Rail is authorised by Paragraph (5) to impose restrictive covenants in relation to the land specified in columns (1) and (2) of Schedule 12 (*power to acquire ground anchor rights*). The imposition of restrictive covenants is required for the maintenance or protection of the ground anchors, soil nails or other subsoil works referred to in Paragraph (4)(a) in respect of development that may be carried out near to or over land in which such subsoil works are located so to ensure their purpose of strengthening and stabilising the railway is not compromised.

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

Such provision has precedent in article 27 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679), article 21 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) and article 30 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067).

Article 29 (*Power to acquire subsoil or airspace only*) authorises Network Rail to acquire the subsoil or airspace over any land without acquiring the whole of that land. In certain cases it will be necessary only to acquire a stratum of land above or below the surface (e.g. to accommodate a bridge over a road or foundations in the subsoil) and in the absence of Article 29 Network Rail would be obliged to acquire the whole interest in the land. It is based on the model clause relating to the acquisition of the subsoil but is extended to the acquisition of airspace as well. There are precedents for this in article 8 of the Network Rail (Reading) (Land Acquisition) Order 2009 (S.I. 2009 No. 2728), article 26 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679), article 22 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446), article 26 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), article 32 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and article 26 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

As with Article 28, following the principle established by the model clauses for cases where acquisition is limited to subsoil acquisition, Paragraph (2) provides that where Network Rail acquires part of, or rights in, the subsoil or under surface of land or the airspace over land Network Rail is not required to acquire a greater interest in the land. Therefore, Paragraph (3) disapplies in connection with such acquisition the counter notice procedures in respect of land subject to such limited acquisition. The purpose of these provisions is to give Network Rail the ability to minimise so far as is possible the extent of additional interests, not required for the project, that are to be compulsorily acquired, with consequently less impact on affected landowners, and lower payments of compensation, both of which are in the public interest. However, the operation of Paragraphs (2) and (3) are subject to Paragraph (4) and are to be disregarded where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory or airspace above a house, building or manufactory. Again, Paragraph (4) incorporates the protection contemplated by the model clauses for cases where acquisition is limited to subsoil acquisition.

This limitation on acquisition has precedent in article 23 of the London Underground (Bank Station Capacity Upgrade) Order 2015 (S.I. 2015 No. 2044), article 32 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and article 26 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Article 30 (*Rights under or over streets*) permits Network Rail to appropriate and use so much of the subsoil of, or airspace over, any street within the limits of deviation for the scheduled works and the limits of land to be acquired or used without being required to acquire any part of the street or any easement or right in it. Provision is made for the payment of compensation.

Article 31 (*Temporary use of land for construction of works*) enables Network Rail, in connection with the carrying out of the authorised works, to take temporary possession of (i) land listed in Schedule 13 (*land of which temporary possession may be taken*) and (ii) land within the scope of Paragraph (1)(a)(ii) which is subject to compulsory acquisition under the Order provided the compulsory acquisition process has not begun in relation to it. Paragraph (1)(a)(ii) is an addition to the model clauses. It follows the approach adopted in a number of recent Orders (e.g. article

27 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679, article 21 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No.2027), article 24 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446) article 28 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), article 34 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067), article 23 of the Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024 No. 526) and article 28 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284). It allows greater flexibility in the event that following detailed design of the works it is decided that only temporary occupation rather than permanent acquisition of land is required.

The provisions also depart from the model clauses in allowing (as well as temporary works), permanent mitigation works or permanent railway protection works (as defined in Paragraph 13) specified in Schedule 13 (*land of which temporary possession may be taken*) and other permanent mitigation works to be constructed and left on the land, without a requirement for these to be removed. This would apply, for example, where mitigation is provided but Network Rail does not need to retain a permanent interest or rights in the land.

In respect of certain specified plots of land the power of temporary occupation and use is limited to the subsoil or under-surface of land as lies more than 5 metres beneath the level of the surface of the land (see the definition of “designated subsoil in Paragraph (13)) to allow for the installation of temporary ground stabilisation works required to facilitate the construction of the authorised works. This is provided for in Article 31(2) and Article 31(13). This approach to the limitation on the extent of temporary possession has precedent in article 27 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933) and article 34 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067).

Paragraph (12) provides that the provisions of the Neighbourhood Planning Act 2017 (c. 20) do not apply to any powers of temporary possession exercised under the Order. This is to provide certainty of the applicable regime to be applied, given the relevant provisions of that enactment are not yet in force.

Article 32 (*Temporary use of land for maintenance of works*) provides for Network Rail to take temporary possession of the land within the Order limits (other than that consisting of a house, garden or occupied building) for the purpose of maintaining the authorised works or ancillary works in the five years following the opening of the railway. Network Rail may construct temporary works and buildings on such land if they are reasonably required for the maintenance of the authorised or ancillary works. Provision is made for notice to be given. Paragraph (11) provides that the provisions of the Neighbourhood Planning Act 2017 (c. 20) do not apply to any powers of temporary possession exercised under the Order. This is to provide certainty of the applicable regime to be applied, given the relevant provisions of that enactment are not yet in force.

Article 33 (*Temporary use of land for access*) authorises the use of land specified in Schedule 14 (*temporary use of land for access*) for the purpose of temporary access (rather than possession) in connection with the construction of the authorised works.

7 days' notice is required to be given to the owners and occupiers unless access is urgently required. This is not a model clause but the purpose of the power is to minimise blight to the land in question where outright acquisition, the acquisition of permanent rights or temporary possession is not required. Paragraph (7) provides that the provisions of the Neighbourhood Planning Act 2017 (c. 20) do not apply to any powers of temporary possession exercised under the Order. This is to provide certainty of the applicable regime to be applied, given the relevant provisions of that enactment are not yet in force. This provision has precedent in article 11 of the Network Rail (Reading) (Land Acquisition) Order 2009 (S.I. 2009 No. 2728), article 30 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114) article 36 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and article 30 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Compensation

Article 34 (*Disregard of certain interests and improvements*) provides that in assessing the compensation payable in respect of compulsory acquisition the Upper Tribunal must disregard any interest in land or any enhancement of an interest in land caused by improvements which they are satisfied were created or undertaken with a view to obtaining compensation or increased compensation.

Supplementary

Article 35 (*Extinction or suspension of private rights of way*) provides for the extinguishment of private rights of way over land compulsorily acquired, and the suspension of private rights of way in respect of land temporarily occupied and for payment of compensation.

In addition to the provisions of the model clauses, Paragraph (7) of this article provides for Network Rail to exclude the application of any or all of the provisions of this article and to enter into agreements making contrary provision. Such provision has precedent, in particular, in article 40 of the Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005 No. 120) and is useful for the purposes of flexibility. That precedent has been adapted so that restrictions on powers to extinguish or suspend private rights of way in agreements are only effective if such agreements are made in contemplation of the Order, see for example article 26 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No.2027) and article 32 of the Network Rail (Ordsall Chord) Order 2015 (S.I. 2015 No. 780), article 28 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446), article 32 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114), article 39 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067), article 26 of the Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024 No. 526) and article 32 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

The model clause is also extended so as to apply to private rights of way over land subject to the imposition of restrictive covenants or the compulsory acquisition of rights. In such circumstances, the private rights are extinguished only insofar as they are incompatible with the exercise of the right or the burden of the restrictive

covenant. This has precedent in article 28 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446).

Article 36 (*Time limit for exercise of powers of acquisition*) imposes a time limit of five years from the coming into force of this Order for the exercise of powers of compulsory acquisition of land.

PART 4

MISCELLANEOUS AND GENERAL

Article 37 (*Defence to proceedings in respect of statutory nuisance*) provides Network Rail with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990 (c. 43) if it can show that works are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65 of the Control of Pollution Act 1974 (c. 40), or that the nuisance complained of is a consequence of the operation of the works authorised by the Order and that it cannot reasonably be avoided. Although not a model clause, this is a provision which has now become common. Article 38 of the Chiltern Railways (Bicester to Oxford Improvements) Order 2012 (S.I. 2012 No. 2679) and article 28 of the Network Rail (Huyton) Order 2014 (S.I. 2014 No.2027) are examples of recent precedents.

Following article 35 of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 (S.I. 2020 No. 114)), article 41 of the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067), article 28 of the Network Rail (Church Fenton Level Crossing Reduction) Order 2024 (S.I. 2024 No. 526) and article 35 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284), Paragraph (3) extends this provision to provide a defence against abatement proceedings brought by a local authority under section 80(4) of the 1990 Act.

Article 38 (*Planning permission*) ensures that once constructed, the railway will be treated as operational land and so will have the benefit of permitted development rights under Part 8 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (S.I. 2015 No. 596).

Article 39 (*Power to lop trees overhanging the authorised works*) enables Network Rail to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised railway and danger to passengers and users. Provision is included for compensation.

Article 40 (*Open space land*) This article is not in the model clauses. This article provides that when Network Rail enters onto open space land, as defined in Paragraph (2), under section 11(1) of the Compulsory Purchase Act 1965 or section 8 of the Compulsory Purchase (Vesting Declarations) Act 1981 the open space land will be discharged from all rights, trusts and incidents to which it was previously subject. This article is included to address open space land for which it has been certified under section 19 of the Acquisition of Land Act 1981 (c. 67) that land in exchange is unnecessary.

Article 41 (*Power to operate and use railway*) authorises Network Rail to operate and use the railway.

Article 42 (*Obstruction of construction of authorised works*) makes it a criminal offence without reasonable cause to obstruct the construction of the authorised works and to interfere with Network Rail's apparatus.

Article 43 (*Traffic regulation*) this article is not a model clause. This article is required to enable Network Rail to make provision for traffic regulation for the purposes of and during the construction of the works and for the purposes of, or in connection with, or in consequence of, the maintenance or operation of the authorised works. Principally this traffic regulation is required in relation to restrictions on stopping, waiting, parking, loading or unloading, suspension of pedestrian crossings, speed restrictions and limits and the location of bus stops. The streets subject to these traffic regulations and the extent of such regulations are specified in Schedule 15, Parts 1 to 8 (*traffic regulation*).

In addition, Paragraph (3) provides a general power to make traffic regulations in connection with, or in consequence of, the construction, maintenance or operation of the authorised works. If Network Rail wishes to exercise this general power it will need to obtain the consent of the traffic authority which consent shall not be unreasonably withheld. For the reasons given above (see for example Articles 13 and 14), Paragraph (5) has been inserted to provide that if within 28 days of the application for consent being made a traffic authority fails to respond to an application for consent, or refuses consent without giving any grounds for its refusal, the traffic authority is deemed to have given its consent.

This provision is based on precedent provisions such as article 39 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933) and article 35 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446).

Article 44 (*Traffic signs*) authorises Network Rail to place and maintain traffic signs for the purposes of the authorised works or in connection with a traffic regulation order made under Article 43 and makes provision requiring Network Rail to consult with and enter into arrangements with the traffic authority for this purpose. This article is based upon a precedented provision in article 38 of the Leeds Railway Station (Southern Entrance) Order 2013 (S.I. 2013 No. 1933), article 44 of the Network Rail (Hope Valley Capacity) Order 2018 (S.I. 2018 No. 446), article 50 the Network Rail (Huddersfield to Westtown (Dewsbury) Improvements) Order 2022 (S.I. 2022 No. 1067) and article 43 of the Network Rail (Leeds to Micklefield Enhancements) Order 2024 (S.I. 2024 No. 1284).

Article 45 (*Disclosure of confidential information*) makes disclosure of certain confidential information obtained upon entry to certain premises under article 21 (*protective works to buildings, roads and apparatus of a statutory undertaker*) or article 22 (*power to survey and investigate land*) a criminal offence.

Article 46 (*Statutory undertakers etc.*) introduces Schedule 16 to the Order which contains specific safeguards for statutory undertakers.

Article 47 (*Protection of interests*) introduces Schedule 17 to the Order which is in five parts containing detailed protective provisions for specific bodies.

Article 48 (*Certification of plans etc.*) requires Network Rail to submit the book of reference, the deposited plans, the deposited sections and traffic regulation plans to the Secretary of State for certification after the making of this Order.

Article 49 (*Service of notices*) makes provision as to the service of notices or other documents for the purposes of the Order.

Article 50 (*No double recovery*) prevents compensation being payable in respect of the same matter both under the Order and under any other enactment, contract or rule of law.

Article 51 (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration.

**DEPARTMENT FOR TRANSPORT
202[X]**

Rule 10(2)(b)

Transport and Works Act 1992

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

**THE NETWORK RAIL (STALYBRIDGE
TO DIGGLE (SADDLEWORTH)
ENHANCEMENTS) ORDER**

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

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