
STATUTORY INSTRUMENTS

2020 No. 114

The Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020 and comes into force on 25th February 2020.

Interpretation

2.—(1) In this Order—

“the 1961 Act” means the Land Compensation Act 1961(1);

“the 1965 Act” means the Compulsory Purchase Act 1965(2);

“the 1980 Act” means the Highways Act 1980(3);

“the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981(4);

“the 1990 Act” means the Town and Country Planning Act 1990(5);

“the 1991 Act” means the New Roads and Street Works Act 1991(6);

“the 2003 Act” means the Communications Act 2003(7);

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

“authorised works” means the scheduled works and any other works authorised by this Order or any part of them;

“the book of reference” means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

“bridleway” has the same meaning as in 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 the 1980 Act;

“cycle track” has the same meaning as in the 1980 Act;

“deposited plans” means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;

(1) 1961 c. 33.
(2) 1965 c. 56.
(3) 1980 c. 66.
(4) 1981 c. 66.
(5) 1990 c. 8.
(6) 1991 c. 22.
(7) 2003 c. 21.

“deposited sections” means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;

“East West Railway Company Limited” means East West Railway Company Limited (company registration number 11072935) whose registered office is at Great Minster House, 33 Horseferry Road, London, England, SW1P 4DR and includes any persons as may assume its functions prior to any transfer under article 34 (power to transfer undertaking);

“electronic transmission” means a communication transmitted—

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

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

“footpath” and “footway” have the same meanings as in the 1980 Act;

“highway” and “highway authority” have the same meaning as in the 1980 Act;

“limits of deviation” means the limits of deviation for the scheduled works shown on the deposited plans;

“limits of land to be acquired or used” means the limits of land to be acquired or used shown on the deposited 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 1 Eversholt Street, London, NW1 2DN;

“Order land” means the land shown on the deposited plans which is within the limits of land to be acquired or used or the limits of deviation and described in the book of reference;

“Order limits” means the limits of deviation and the limits of land to be acquired or used and shown on the deposited plans;

“owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981⁽⁸⁾;

“road hump” has the same meaning as in the 1980 Act⁽⁹⁾;

“the scheduled works” means the works specified in Schedule 1 (scheduled works) or any part of them;

“statutory undertaker” means—

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

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

“street” includes part of a street;

“street authority”, in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

“the tribunal” means the Lands Chamber of the Upper Tribunal;

“the Winslow Station works” means works at Winslow Station permitted by a grant of planning permission under the 1990 Act, with the reference no 13/02112/AOP and dated 29th November 2013, and any variation or replacement of that planning permission; 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.

(8) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1992 (c. 34). There are other amendments to section 7 which are not relevant to this Order

(9) The definition of “road hump” was inserted by section 32 of, and paragraph 1 of Schedule 6 to, the Transport Act 1981 (c. 56).

(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.

(3) References in this Order to numbered plots are references to plot numbers on the deposited 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 that work.

(5) References in this Order to points identified by letters with or without numbers, are construed as references to points so lettered on the deposited plans.

(6) References in this Order to numbered works are references to the scheduled works as numbered in Schedule 1.

Incorporation of the Railway Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(**10**) are incorporated in this Order—

section 58(**11**) (company to repair roads used by them), except for the words from “and if any question” to the end;

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words “or directed by such justices to be made by the company” and “or, in case of difference, as shall be authorised by two justices”;

sections 72 and 73 (supplementary provisions relating to accommodation works);

section 77 (presumption that minerals excepted from acquisition of land);

sections 78 to 85E(**12**) and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(**13**);

section 103(**14**) (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway), except for the words from “and if any person” to “for every such offence”; and

section 145(**15**) (recovery of penalties).

(2) Section 12 (signals, watchmen etc.) of the Railways Clauses Act 1863(**16**) is incorporated in this Order.

(3) In those provisions, as incorporated in this Order—

“the company” means Network Rail;

“goods” includes anything conveyed on the railway authorised to be constructed by this Order;

“lease” includes an agreement for a lease;

(10) 1845 c. 20.

(11) Section 58 was amended by section 46 of, and Part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c. 101).

(12) Section 84, as substituted, was amended by Part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1982 (c. 48). Section 85C, as substituted, was amended by virtue of section 17(2)(a) of the Interpretation Act 1978 (c. 30).

(13) 1923 c. 20.

(14) Section 103 was amended by the Statute Law Revision Act 1892 (c. 19), Part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1982 (c. 48).

(15) Section 145 was amended by the Statute Law Revision Act 1892 and Part 2 of Schedule 12 to the Transport Act 1962 (c. 46).

(16) 1863 c. 92.

“prescribed”, in relation to any such provision, means prescribed by this Order for the purposes of that provision;

“the railway” means any railway authorised to be constructed by this Order and any other authorised works; and

“the special Act” means this Order.

Application of the 1991 Act

4.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are to be treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major transport works if—

- (a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or
- (b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(17) (dual carriageways and roundabouts) of the 1980 Act.

(2) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

- section 56 (directions as to timing);
- section 56A (power to give directions as to placing of apparatus);
- section 58 (restrictions following substantial road works);
- section 73A (power to require undertaker to re-surface street);
- section 73B (power to specify timing, etc., of re-surfacing);
- section 73C (materials, workmanship and standard of re-surfacing);
- section 78A (contributions to costs of re-surfacing by undertaker); and
- Schedule 3A (restriction on works following substantial street works).

(3) The provisions of the 1991 Act mentioned in paragraph (4) (which, together with other provisions of that Act, apply in relation to the carrying out of street works) and any regulations made or code of practice issued or approved under those provisions apply (with the necessary modifications) in relation to the temporary stopping up, temporary alteration or temporary diversion of a street by Network Rail under the powers conferred by article 14 (temporary stopping up of streets) and the carrying out of works under article 12 (power to execute street works) whether or not the stopping up, alteration or diversion, or the carrying out of such works, constitutes street works within the meaning of that Act.

(4) The provisions of the 1991 Act(18) referred to in paragraph (3) are—

- section 54(19) (advance notice of certain works), subject to paragraph (5);
- section 55(20) (notice of starting date of works), subject to paragraph (5);
- section 57(21) (notice of emergency works);

(17) Section 64 was amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

(18) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).

(19) As amended by section 49(1) of the Traffic Management Act 2004.

(20) As also amended by sections 49(2) and 51(9) of the Traffic Management Act 2004.

(21) As also amended by section 52(3) of the Traffic Management Act 2004.

section 59(22) (general duty of street authority to co-ordinate works);
section 60 (general duty of undertakers to co-operate);
section 68 (facilities to be afforded to street authority);
section 69 (works likely to affect other apparatus in the street);
section 76 (liability for cost of temporary traffic regulation); and
section 77 (liability for cost of use of alternative route),

and all such other provisions as apply for the purposes of the provisions mentioned above.

(5) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(6) Nothing in article 15 (construction and maintenance of new or altered highways)—

- (a) prejudices the operation of section 87 (prospectively maintainable highways) of the 1991 Act; and Network Rail is not, by reason of any duty under that article to maintain a street, to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Disapplication of legislative provisions

5.—(1) The following provisions do not apply in relation to any works executed under the powers conferred by this Order—

- (a) regulation 12(1)(a) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(23) in relation to the carrying out of a relevant flood risk activity;
- (b) section 23 (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991(24);
- (c) paragraph 5 (consent required for alteration, removal or replacement of a designated feature) of Schedule 1 to the Flood and Water Management Act 2010(25);
- (d) paragraph 7 (approval required for a drainage system for construction work) of Schedule 3 (sustainable drainage) to the Flood and Water Management Act 2010; and
- (e) the provisions of any byelaws made under, or having effect as if made under, section 66 (powers to make byelaws) of the Land Drainage Act 1991, which require consent or approval for the carrying out of the works.

(2) In this article, “flood risk activity” means an activity described in paragraph 3(1)(a), (b) or (c) of Schedule 25 (flood risk activities and excluded flood risk activities) to the Environmental Permitting (England and Wales) Regulations 2016.

(22) As amended by section 42 of the Traffic Management Act 2004.

(23) S.I. 2016/1154.

(24) 1991 c. 59.

(25) 2010 c. 29.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

6.—(1) Network Rail may construct and maintain the scheduled works.

(2) Subject to article 7 (power to deviate) the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (5), Network Rail may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) electrical equipment, signalling and permanent way works;
- (b) ramps, means of access and footpaths, bridleways and cycle tracks;
- (c) embankments, cuttings, aprons, abutments, retaining walls, wing walls and culverts;
- (d) works to install or alter the position of apparatus, including mains, sewers, drains and cables;
- (e) works to alter or remove any structure erected upon any highway or adjoining land; and
- (f) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;

(4) Subject to paragraph (5), Network Rail may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the authorised works.

(5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on—

- (a) land specified in columns (1) and (2) of Schedule 2 (acquisition of land for ancillary works) for the purposes specified in column (3) of that Schedule;
 - (b) land specified in columns (1) and (2) of Schedule 3 (land in which only new rights etc. may be acquired) for the purposes specified in column (3) of that Schedule; or
 - (c) land specified in columns (1) and (2) of Schedule 4 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule.
- (6) Network Rail may, within the Order limits—
- (a) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance and operation of the authorised works (other than works authorised by this paragraph); and
 - (b) carry out and maintain works for the benefit or protection of land affected by the authorised works (other than works authorised by this paragraph).

Power to deviate

7. In constructing or maintaining any of the scheduled works, Network Rail may—

- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work; and

- (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent upwards not exceeding 3 metres; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

Level Crossings

Closure of road level crossings

8.—(1) Subject to paragraph (3), each of the level crossings specified in columns (1) and (2) of Parts 1 and 2 of Schedule 5 (replacement and closure of road level crossings) are to be stopped up and discontinued.

(2) Subject to paragraph (3) and paragraph 2 of Schedule 15 (provisions relating to statutory undertakers etc.), upon the stopping up and discontinuance of each of the level crossings referred to in paragraph (1), the street specified in relation to that level crossing in column (3) of Parts 1 and 2 of Schedule 5 is to be stopped up to the extent specified in column (3) and any right of way over the part of the street to be stopped up is extinguished.

(3) Paragraphs (1) and (2) are not to take effect with respect to a level crossing specified in column (2) or a street specified in column (3) of Part 1 of Schedule 5 until the new street specified in relation to it in column (4) of that Schedule has been completed to the reasonable satisfaction of the street authority 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, under Part 1 of the 1961 Act.

Replacement and closure of footpath level crossings

9.—(1) Subject to paragraph (3), each of the footpath level crossings specified in column (2) of Parts 1 and 2 of Schedule 6 (replacement and closure of footpath level crossings) are stopped up and discontinued.

(2) Subject to paragraph (3) and paragraph 2 of Schedule 15 (provisions relating to statutory undertakers etc.), upon the stopping up and discontinuance of a footpath level crossing referred to in paragraph (1), any right of way over the part of the footpath specified in relation to it in column (3) of Parts 1 and 2 of Schedule 6 is extinguished.

(3) Paragraphs (1) and (2) are not to take effect with respect to a footpath specified in columns (2) and (3) of Part 1 of Schedule 6 until the replacement right of way specified in relation to it in column (4) of that Part of that Schedule has been provided to the reasonable satisfaction of the street authority and is open for use.

(4) On completion of the construction of the replacement right of way specified in column (4) of Schedule 6 Network Rail must submit a written request to the street authority for written confirmation that the replacement right of way has been provided to the reasonable satisfaction of the authority, and can be opened for use, and such confirmation must not be unreasonably withheld and must be given within 28 days of the street authority receiving a request under this paragraph. If the street authority fails to notify Network Rail in writing of a decision by the expiry of 28 days from receiving the request, the street authority is deemed to have provided confirmation.

(5) If the street authority notifies Network Rail that confirmation cannot be provided under paragraph (4), the matter is to be determined in accordance with article 46 (arbitration).

(6) In providing the replacement right of way specified in column (4) of Part 1 of Schedule 6, Network Rail may within the Order limits erect barriers and signs and carry out or provide any ancillary works or conveniences, subject to the agreement of the highway authority which agreement must not be unreasonably withheld.

(7) 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, under Part 1 of the 1961 Act.

(8) Any replacement footpath or bridleway specified in column (4) of Part 1 of Schedule 6 provided under this Order is to be a public footpath or bridleway and, subject to paragraphs (9) to (12), in relation to that replacement right of way, section 28(26) (compensation for loss caused by public path creation order) of the 1980 Act applies as if the replacement right of way had been created by a public path creation order.

(9) In its application by virtue of paragraph (8), section 28 of the 1980 Act has effect with the modifications mentioned in paragraphs (10) to (12).

(10) In subsection (1), for the words “the authority by whom the order was made” there are substituted the words “Network Rail Infrastructure Limited”.

(11) For subsection (2), substitute—

“(2) A claim for compensation under this section is to be made to Network Rail Infrastructure Limited 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 Infrastructure Limited by delivering it at, or by sending it by pre-paid post to, the registered office of Network Rail Infrastructure Limited.”

(12) Omit subsection (3).

(13) For the purposes of paragraphs (8) to (12), in section 307(2) (disputes as to compensation which are to be determined by Upper Tribunal and related provisions) of the 1980 Act, as it applies to section 28 of the 1980 Act by virtue of section 307(1), for “the authority from whom the compensation in question is claimed” substitute “Network Rail Infrastructure Limited”.

Accommodation crossings

10.—(1) Subject to paragraph (2) and regardless of anything in section 68 (accommodation works by the Company) of the Railways Clauses Consolidation Act 1845 as incorporated in the Oxford and Bletchley Junction Railway Act 1846(27), the Aylesbury and Buckingham Railway Act 1860(28) or any other enactment or instrument, all public or private rights of way (if any) across the railway by means of the accommodation facilities specified in columns (2) and (3) of Parts 1 and 2 Schedule 7 (accommodation crossings), are extinguished.

(2) Paragraph (1) does not take effect with respect to the extinguishment of the private rights of way by means of an accommodation facility specified in columns (2) and (3) of Part 1 of Schedule 7 (accommodation crossings for which a substitute is to be provided) until the accommodation facility specified in relation to it in column (4) of Part 1 of that Schedule has been provided.

(3) 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, under Part 1 of the 1961 Act.

Streets

Power to alter layout etc. of streets

11.—(1) Network Rail may for the purposes of the authorised works alter the layout of, or carry out any works in, the streets specified in columns (1) and (2) of Schedule 8 (streets subject to alteration of layout) in the manner specified in relation to that street in column (3).

(26) As amended by S.I. 2006/1177.

(27) 1846 c. lxxxii (9 & 10 Vict.).

(28) 1860 c. cxcii (23 & 24 Vict.).

(2) Without limitation on the scope of the specific powers conferred by paragraph (1), but subject to paragraph (3), Network Rail may, for the purposes of constructing and maintaining any scheduled work, 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 carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) temporarily remove any road hump within the street.

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

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) If within 28 days of receiving an application for consent under paragraph (4) 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.

Power to execute street works

12.—(1) Network Rail may, for the purposes of the authorised works, enter upon any of the streets specified in Schedule 9 (streets subject to street works) 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 apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

(2) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Stopping up of streets

13.—(1) Subject to the provisions of this article, Network Rail may, in connection with the carrying out of the authorised works, stop up each of the streets specified in column (2) of Parts 1 and 2 of Schedule 10 (streets to be stopped up) to the extent specified in column (3) of that Part of that Schedule.

(2) No street specified in column (2) of Part 1 of Schedule 10 is to be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule, has been constructed and completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and then maintained by Network Rail, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part 2 of Schedule 10 to this Order (being a street to be stopped up for which no substitute is to be provided) is to be wholly or partly stopped

up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the land which abuts on either side of the street to be stopped up.

- (4) The condition referred to in paragraph (3) is that—
- (a) Network Rail is in possession of the land;
 - (b) there is no right of access to the land from the street concerned;
 - (c) there is reasonably convenient access to the land otherwise than from the street concerned;
or
 - (d) the owners and occupiers of the land have agreed to the stopping up.
- (5) Where a street has been stopped up under this article—
- (a) all rights of way over or along the street so stopped up are extinguished; and
 - (b) Network Rail may appropriate and use for the purpose of its railway undertaking so much of the site of the street as is bounded on both sides by land owned by Network Rail.

(6) Any person who suffers loss by the suspension or extinguishment 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) Paragraphs (8) to (13) of article 9 (which provide for creation of new public rights of way) apply in relation to any replacement footpath or bridleway specified in column (4) of Part 1 of Schedule 10 as they apply to replacement rights of way specified in column (4) of Part 1 of Schedule 6.

Temporary stopping up of streets

14.—(1) Network Rail, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert 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 within the Order limits as a temporary working site.

(3) Network Rail must provide reasonable access for pedestrians going to or from premises abutting 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 11 (streets 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 such 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.

Construction and maintenance of new or altered highways

15.—(1) Any highway to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed in writing between Network Rail and the highway authority in whose area the highway lies, must be maintained by and at the expense of Network Rail for a period of 12 months from its completion and from the expiry of that period by and at the expense of the highway authority.

(2) Where a highway is altered or diverted under this Order, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the highway authority in whose area the highway lies, unless otherwise agreed in writing with the street authority, be maintained by and at the expense of Network Rail for a period of 12 months from its completion and from the expiry of that period by and at the expense of the highway authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a highway over or under any railway of Network Rail.

(4) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain a highway under this article, 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 highway to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court must in particular have regard to the following matters—

- (a) the character of the 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 highway;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway; and
- (e) where Network Rail could not reasonably have been expected to repair that part of the 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 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 highway and that the competent person had carried out those instructions.

Access to works

16.—(1) Network Rail may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 12 (access to works); and
- (b) with the approval of the highway authority, form and lay out such other means of access or improve existing means of access, at such locations within the Order limits as Network Rail reasonably requires for the purposes of the authorised works.

(2) If a highway authority fails to notify Network Rail of its decision within 28 days of receiving an application for approval under paragraph (1), that highway authority is deemed to have granted approval.

Agreements with street authorities

- 17.—(1) A street authority and Network Rail may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
 - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) the maintenance of the structure of any bridge constructed under the powers conferred by this Order;
 - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (e) the execution in the street of any of the works referred to in article 12(1) (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.

Construction of bridges

- 18.—(1) Any bridge to be constructed under this Order for carrying a highway over or under a railway must be constructed in accordance with the plans and specifications approved by the highway authority, but such approval not to be unreasonably withheld.
- (2) If within 28 days of receiving an application for approval under paragraph (1) a highway authority fails to notify Network Rail of its decision or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

Supplemental powers

Discharge of water

- 19.—(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works 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 exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain 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(29).
- (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.

(29) 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).

(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 the requirement for an environmental permit under regulation 12(1)(b) (requirement of environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(30).

(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) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an 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(31) have the same meaning as in that Act.

Protective works to buildings

20.—(1) Subject to the following provisions of this article, Network Rail may at its own expense carry out such protective works to any building lying within the Order limits as Network Rail considers to be necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction in the vicinity of a building of any part of the authorised works; or
- (b) after the completion of the construction of that part of the authorised works in the vicinity of a building at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) For the purpose of determining how the functions under this article are to be exercised Network Rail may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(4) For the purpose of carrying out protective works under this article to a building Network Rail may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to a building but outside its curtilage, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

(30) S.I. 2016/1154.

(31) 1991 c. 57.

Network Rail must, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building to be referred to arbitration under article 46 (arbitration).

(7) Network Rail must compensate the owners and occupiers of any building or land in relation to which the powers conferred by this article have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed in the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the authorised works,

Network Rail must compensate the owners and occupiers of the building for any loss or damage sustained by them.

(9) Without affecting article 45 (no double recovery) nothing in this article relieves Network Rail from any liability to pay compensation under section 10(2)(32) (further provision as to compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article “protective works” in relation to a building means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, maintenance or operation of the authorised works;
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, maintenance or operation of the authorised works; and
- (c) any works the purpose of which is to secure the safe operation of the authorised works or to prevent or minimise the risk of such operation being disrupted.

Power to survey and investigate land

21.—(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

(32) 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.

- (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 (8).
- (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;
 - (e) carrying out any other activities that may be required to facilitate compliance with the instruments mentioned in paragraph (5).
- (5) The instruments referred to in paragraph (4)(e) are—
 - (a) Directive 2011/92/EU of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment(33); or
 - (b) Council Directive 92/42/EEC of 21 May 1992 of the on the conservation of natural habitats and of wild fauna and flora(34).
- (6) If Network Rail obtains a warrant after giving notice in accordance with paragraph (2) it must give a copy of the warrant to all those to whom it gave that notice.
- (7) 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 (8);
 - (b) may not use force unless a justice of the peace has issued a warrant under paragraph (8) 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 as secure against trespassers as when the person entered it.
- (8) 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.
- (9) The force that may be authorised by a warrant is limited to that which is reasonably necessary.
- (10) 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.

(33) O.J. No. L 26, 28.1.2012, p. 1.

(34) O.J. No. L 206, 22.7.1992, p. 7.

(11) 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.

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

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

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(14) 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 (13)(a) in the case of a highway authority; or
- (b) under paragraph (13)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(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, under Part 1 of the 1961 Act.

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of Acquisition

Power to acquire land

22.—(1) Network Rail may acquire compulsorily—

- (a) so much of the land shown on the deposited plans as lying within the limits of deviation and described in the book of reference as may be required for the purposes of the authorised works;
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 (acquisition of land for ancillary works) (being land shown on the deposited plans and described in the book of reference) as may be required for the purpose specified in relation to that land in column (3) of that Schedule; and
- (c) so much of the land shown marked 0652 on the deposited plans and described in the book of reference as may be required for the Winslow Station works,

and may use any land so acquired for those purposes, or for any other purposes that are ancillary to its railway undertaking.

(2) This article is subject to articles 25 (power to acquire new rights) and 28 (temporary use of land for construction of works), and does not apply to any land specified in Schedule 14 (temporary use of land for access).

Application of Part 1 of the 1965 Act

23.—(1) Part 1 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 Acquisition of Land Act 1981⁽³⁵⁾ 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 subject to the following modifications.
- (3) Omit section 4 (which provides a time limit for compulsory purchase of land).
 - (4) In section 4A(1)⁽³⁶⁾ (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 33 (time limit for exercise of powers of acquisition) of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020⁽³⁷⁾”.
 - (5) In section 11(1B)⁽³⁸⁾ (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⁽³⁹⁾ (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”.
 - (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 33 (time limit for exercise of powers of acquisition) of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020”.
 - (8) In Schedule 2A⁽⁴⁰⁾ (counter-notice requiring purchase of land not in notice to treat)—
 - (a) for paragraphs 1(2) and 14(2) substitute—

“(2) But see article 26 (power to acquire subsoil or airspace only) of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020, which excludes the acquisition of subsoil or airspace only from this Schedule.”; 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 articles 28 (temporary use of land for construction of works) and 29 (temporary use of land for maintenance of works) of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020.”

Application of the 1981 Act

- 24.—**(1) The 1981 Act applies as if this Order were a compulsory purchase order.
- (2) The 1981 Act, as applied by paragraph (1), has effect with the following modifications.

⁽³⁵⁾ 1981 c. 67.

⁽³⁶⁾ Subsection (1B) was inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

⁽³⁷⁾ S.I. 2020/114.

⁽³⁸⁾ Subsection (1B) of section 11 was inserted by section 186(1) and (2)(b) of the Housing and Planning Act 2016.

⁽³⁹⁾ Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016.

⁽⁴⁰⁾ Schedule 2A was inserted by paragraph 3 of Schedule 3 to the Housing and Planning Act 2016.

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

(4) Omit section 5A(41) (time limit for general vesting declaration).

(5) In section 5B(42) (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 33 (time limit for exercise of powers of acquisition) of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020”.

(6) In section 6(43) (notices after execution of declaration), in subsection (1)(b), for “section 15 of, or paragraph 6 of Schedule 1 to the Acquisition of Land Act 1981” substitute “section 14A of the Transport and Works Act 1992”.

(7) In section 7(44) (constructive notice to treat), in subsection (1)(a), omit the words “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) In Schedule A1(45) (counter-notice requiring purchase of land not in general vesting declaration), for paragraph 1(2) substitute—

“(2) But see article 26 (power to acquire subsoil or airspace only) of the Network Rail (East West Rail) (Bicester to Bedford Improvements) Order 2020, which excludes the acquisition of subsoil or airspace only from this Schedule.”

(9) References to the 1965 Act are construed as references to that Act as applied to the acquisition of land under article 22 (power to acquire land) by article 23 (application of Part 1 of the 1965 Act).

Power to acquire new rights

25.—(1) Subject to paragraph (2), Network Rail may acquire compulsorily such easements or other rights over any land which it is authorised to acquire under article 22 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision, by creating them as well as by acquiring easements or other rights already in existence.

(2) In the case of the Order land specified in column (2) of Schedule 3 (land in which only new rights etc., may be acquired) Network Rail may compulsorily acquire such new rights as may be required for the purpose specified in relation to that land in column (3) of that Schedule.

(3) In the case of plots shown numbered 0216, 0245, 0252, 0255, 0260, 0910 and 0918 on the deposited plans the power to acquire new rights under paragraph (2) extends to acquiring rights on behalf of owners of land affected by the exercise of the powers of the Order for the purpose specified in relation to those plots in column (2) of Schedule 3.

(4) Subject to Schedule 2A (counter-notice requiring purchase of land) to the 1965 Act (as substituted by paragraph 5(8) of Schedule 13 (modification and compensation and compulsory purchasing enactments for creation of new rights)), where Network Rail acquires a right over land under paragraphs (1) or (2) Network Rail is not required to acquire a greater interest in that land.

(5) Schedule 13 has effect for the purpose of modifying the enactments relating to compensation and the provisions of the 1965 Act in their application in relation to the compulsory acquisition under this Order of a right over land by the creation of a new right.

(41) Section 5A was inserted by section 182(2) of the Housing and Planning Act 2016.

(42) Section 5B was inserted by section 202(2) of the Housing and Planning Act 2016.

(43) 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.

(44) Section 7 was amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.

(45) Schedule 1A was inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016.

(6) In any case where the acquisition of new rights under paragraph (1) or (2) is required for the purpose of diverting, replacing or protecting apparatus of a statutory undertaker Network Rail may, with the consent of the Secretary of State, transfer the power to acquire such rights to the statutory undertaker in question.

(7) The exercise by a statutory undertaker of any power in accordance with a transfer under paragraph (6) is subject to the same restrictions, liabilities and obligations as would apply under this Order if that power were exercised by Network Rail.

Power to acquire subsoil or airspace only

26.—(1) Network Rail may acquire compulsorily so much of, or such rights in, the subsoil of or the airspace over the land referred to in paragraph (1)(a) or (b) of article 22 (power to acquire land) as may be required for any purpose for which that land may be acquired under that provision instead of acquiring the whole of the land.

(2) Where Network Rail acquires any part of, or rights in, the subsoil of or the airspace over land under paragraph (1), Network Rail is not required to acquire an interest in any other part of the land.

(3) Paragraph (2) does not prevent Schedule 2A to the 1965 Act (as modified by article 23 (application of Part 1 of the 1965 Act)) or Schedule A1 to the 1981 Act (as modified by article 24 (application of the 1981 Act)) from applying where Network Rail acquires a cellar, vault, arch or other construction forming part of a house, building or manufactory.

Rights under or over streets

27.—(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 authorised works and may use the subsoil or airspace for those purposes or any other purpose ancillary to its railway undertaking.

(2) Subject to paragraph (4), Network Rail may exercise any power conferred by paragraph (1) 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) 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.

(4) 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, under Part 1 of the 1961 Act.

(5) Compensation is not payable under paragraph (4) 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 of land

Temporary use of land for construction of works

28.—(1) Network Rail may, in connection with the carrying out of the authorised works—

- (a) enter on 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 purpose specified in relation to that land in column (3) of that Schedule relating to the authorised works specified in column (4) of that Schedule; and
 - (ii) subject to paragraph (10), any other Order land in respect of which no notice of entry has been served under section 11(46) (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(47) (execution of declaration) of the 1981 Act;
- (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; and
 - (d) construct any permanent works specified in relation to that land in column (3) of Schedule 4 or any mitigation works on that land.
- (2) Not less than 28 days before entering on 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) in the case of land specified in paragraph (1)(a)(i) after the end of the period of one year beginning with the date of completion of the work specified in relation to that land in column (4) of Schedule 4; or
 - (b) in the case of land referred to 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 this 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 1981 Act.
- (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 be required to—
- (a) replace a building removed under this article;
 - (b) restore the land on which any works have been constructed under paragraph (1)(d); or
 - (c) remove any ground strengthening works which have been placed in that land to facilitate construction of the authorised works.
- (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 under Part 1 of the 1961 Act.
- (7) Without affecting article 45 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(48) (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

(46) 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.

(47) Section 4 was amended by sections 184 and 185 of, and paragraphs 1 and 2 of Schedule 18 to, the Housing and Planning Act 2016.

(48) 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.

the execution of any works, other than loss or damage for which compensation is payable under paragraph (5).

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

(9) Section 13(49) (refusal to give possession to 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 23 (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 22 (power to acquire land) or any land specified in Schedule 3 (land in which only new rights etc., may be acquired).

Temporary use of land for maintenance of works

29.—(1) Subject to paragraph (2), at any time during the maintenance period relating to any of the scheduled works, Network Rail may—

(a) enter upon and take temporary possession of any Order land if such possession is reasonably required for the purpose of maintaining the work or any ancillary works connected with it; and

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

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

(c) any land listed in Schedule 3 (land in which only new rights etc., may be acquired) or Schedule 14 (temporary use of land for access).

(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.

(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 under Part 1 of the 1961 Act.

(8) Without affecting article 45 (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.

(49) 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).

(10) Section 13 (refusal to give possession to 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 23 (application of Part 1 of the 1965 Act).

(11) In this article “the maintenance period” in relation to a scheduled work means the period of 5 years beginning with the date on which the work is opened for use.

Temporary use of land for access

30.—(1) Network Rail may use any land specified in Schedule 14 (land over which temporary rights of access may be exercised) for the passage of persons or vehicles (with or without materials, plant and machinery) for the purpose of or in connection with the construction of the authorised works.

(2) The power under paragraph (1) is exercisable on giving at least 7 days’ notice (or, where access is urgently required, such notice as is reasonably practicable) to the owners and occupiers of the land.

(3) But paragraph (2) does not require notice to be given in relation to land where notice under that paragraph has already been given in relation to that land.

(4) Network Rail must pay compensation to the owners and occupiers of the land to which paragraph (1) applies for any loss or damage arising from the exercise of the power conferred by that paragraph.

(5) Any dispute as to a person’s entitlement to compensation under paragraph (2), or as to the amount of such compensation, shall be determined under Part 1 of the 1961 Act.

(6) Section 13 (refusal to give possession to 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 23 (application of Part 1 of the 1965 Act).

Compensation

Disregard of certain interests and improvements

31.—(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

32.—(1) Subject to paragraph (6), 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)(50) (powers of entry) of the 1965 Act,

whichever is the sooner.

(2) Subject to paragraph (6), all private rights of way over land owned by Network Rail which, being within the Order limits, is required for the purposes of this Order 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 covenants under this Order are extinguished in so far as their continuance would be inconsistent with the exercise of the right or the burden of the restrictive covenant—

- (a) as from the date of the acquisition of the right or the imposition of the restrictive covenant 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 paragraph (6), 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 extinguishment or 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.

(6) This article does not apply in relation to any right of way to which section 271 or 272(51) (extinguishment of rights of statutory undertakers etc.) of the 1990 Act or paragraph 2 of Schedule 15 (provisions relating to statutory undertakers etc.) applies.

(7) Paragraphs (1), (2), (3) and (4) have effect subject to—

- (a) any notice given by Network Rail before the completion of the acquisition of the land, Network Rail's appropriation of it, Network Rail's entry onto it or Network Rail taking temporary possession of it that any or all of those paragraphs do not apply to any right of way specified in the notice; and
- (b) any agreement made (whether before or after any of the events mentioned in sub-paragraph (a) and before or after the coming into force of this Order) which makes reference to this article between Network Rail and the person in or to whom the right of way in question is vested or belongs.

(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.

Time limit for exercise of powers of acquisition

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

(50) 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 (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.

(51) Section 272 was amended by paragraphs 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

- (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 23 (application of part 1 of the 1965 Act); and
 - (b) no declaration is to be executed under section 4 (execution of declaration) of the 1981 Act as applied by article 24 (application of the 1981 Act).
- (2) The powers conferred by article 28 (temporary use of land for construction of works) 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 was taken before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Power to transfer undertaking

34.—(1) Network Rail may—

- (a) transfer to another person (the “transferee”) its right to construct, maintain, use or operate the authorised works (or any part of them) and such related statutory rights and powers as may be agreed in writing between Network Rail and the transferee; or
- (b) grant to another person (the “lessee”) for a period agreed in writing between Network Rail and the lessee the right to construct, maintain, use operate the authorised works (or any part of them) and such related statutory rights and powers as may be so agreed.

(2) Where an agreement has been made in accordance with paragraph (1) references in this Order to Network Rail, except in paragraph (1), include references to the transferee or lessee.

(3) The exercise by a person of the rights or powers conferred by any enactment by any person in pursuance of any transfer or grant under paragraph (1) is subject to the same restrictions, liabilities and obligations as would apply under this Order if those rights or powers were exercised by Network Rail.

(4) The consent of the Secretary of State is required for the exercise of the powers of paragraph (1), except where the transferee or lessee is the East West Railway Company Limited.

Defence to proceedings in respect of statutory nuisance

35.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisance) of the Environmental Protection Act 1990⁽⁵²⁾ in relation to a nuisance falling within paragraph (g) of section 79(1)⁽⁵³⁾ of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance) 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 authorised works and that the nuisance is attributable to the carrying out of the authorised works which are being carried out in accordance with a notice served under section 60

(52) 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).

(53) 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).

(control of noise on construction sites), or a consent given under section 61(54) (prior consent for work on construction sites) or section 65(55) (noise exceeding registered level), of the Control of Pollution Act 1974(56); or

- (b) that the nuisance is a consequence of the construction, operation or maintenance of the authorised works and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 and section 65(8) of that Act (corresponding provision in relation to consent for registered noise level to be exceeded), do 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) of the Environmental Protection Act 1990 (offence of contravening abatement notice) in respect of a statutory nuisance falling within section 79(1)(g) or (ga)(57) of that Act where the offence consists in contravening requirements imposed by virtue of section 80(1)(a) or (b)(58) of that Act, it is a defence to show that the nuisance—

- (a) is a consequence of the construction, operation or maintenance of the works authorised by this Order; and
(b) cannot reasonably be avoided.

(4) The provisions of this article do not affect the application to the authorised works of section 122 (statutory authority as a defence to actions in nuisance, etc.) of the Railways Act 1993(59) or any rule of common law having similar effect.

Power to lop trees overhanging the authorised works

36.—(1) Network Rail may fell or lop any tree or shrub near any part of the authorised works, 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 authorised works or any apparatus used on the authorised works; or
(b) from constituting a danger to passengers or other persons using the authorised works.

(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 under Part 1 of the 1961 Act.

Power to operate and use railway

37.—(1) Network Rail may operate and use the railway and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993.

(54) 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).

(55) Section 65 was amended by paragraph 15(4) of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

(56) 1974 c. 40.

(57) Section 79(1)(ga) was inserted by section 2(1) and (2)(b) of the Noise and Statutory Nuisance Act 1993.

(58) Section 80(1) was amended by section 86 of the Clean Neighbourhoods and Environment Act 2005.

(59) 1993 c. 43. Section 122 was amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

Planning Permission

38. Planning permission which is deemed by a direction under section 90(2A)(60) (development with government authorisation) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operation land for the purposes of that Act) of that Act.

Obstruction of construction of authorised works

- 39.** Any person who, without reasonable excuse—
- (a) obstructs any person acting under the authority of Network Rail in setting out the lines of the scheduled works or in constructing any authorised work; or
 - (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of Network Rail,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Disclosure of confidential information

- 40.** A person who—
- (a) enters a factory, workshop or workplace under the provisions of article 20 (protective works to buildings) or article 21 (power to survey and investigate land); and
 - (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Statutory undertakers etc.

- 41.** The provisions of Schedule 15 (provisions relating to statutory undertakers etc.) have effect.

Certification of plans etc.

42. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited sections and the deposited plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, the deposited sections and the deposited 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

- 43.—(1)** A notice or other document required or authorised to be served for the purposes of this Order may be served—
- (a) by post; or
 - (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(60) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act 1992 (c. 42).

(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⁽⁶¹⁾ 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.

(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 notice 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 communication 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) This article does not exclude the employment of any method of service not expressly provided for by it.

Protection of interests

44. Schedule 16 (protective provisions) has effect.

No double recovery

45. 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.

(61) 1978 c. 30.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Arbitration

46. 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 for Transport

Susan Anderson
Head of the Transport and Works Act Orders
Unit
Department for Transport

4th February 2020