
STATUTORY INSTRUMENTS

2018 No. 937

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

**The Network Rail (Felixstowe Branch Line
Improvements – Level Crossings Closure) Order 2018**

Made - - - - 5th September 2018

Coming into force - - 26th September 2018

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006⁽¹⁾ for an Order under sections 1 and 5 of the Transport and Works Act 1992⁽²⁾ (“the 1992 Act”).

The Secretary of State caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn, and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposals comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State’s determination was published in the London Gazette on 20th August 2018.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 15 to 17 of Schedule 1 to, the 1992 Act makes the following Order—

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018 and comes into force on 26th September 2018.

(1) S.I. 2006/1466, amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755, S.I. 2014/469, S.I. 2015/377, S.I. 2015/627, S.I. 2015/1682, S.I. 2017/979 and S.I. 2017/1070.
(2) 1992 c. 42. Section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1659.

Interpretation

2.—(1) In this Order—

- “the 1961 Act” means the Land Compensation Act 1961**(3)**;
- “the 1965 Act” means the Compulsory Purchase Act 1965**(4)**;
- “the 1980 Act” means the Highways Act 1980**(5)**;
- “the 1981 Act” means the Compulsory Purchase (Vesting Declarations) Act 1981**(6)**;
- “the 1990 Act” means the Town and Country Planning Act 1990**(7)**;
- “the 1991 Act” means the New Roads and Street Works Act 1991**(8)**;
- “address” includes any number or address used for the purposes of electronic transmission;
- “authorised works” means the scheduled work and any other works authorised by this Order;
- “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;
- “definitive map and statement” has the meaning given by section 53(1) (duty to keep definitive map and statement under continuous review) of the Wildlife and Countryside Act 1981**(9)**;
- “the deposited plans” means the plans entitled “Works and Land and Public Rights of Way Plans” certified by the Secretary of State as the deposited plans for the purposes of this Order;
- “electronic transmission” means a communication transmitted—
 - (a) by means of an electronic communications network; or
 - (b) by other means but while in electronic form;
- “footpath” has the same meaning as in the 1980 Act;
- “highway” and “highway authority” have the same meaning as in the 1980 Act;
- “the limits of deviation” means the limits of deviation for the scheduled work shown on the deposited plans;
- “the 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 limits” means the limits of deviation and any additional limits of land to be acquired or used;
- “owner”, in relation to land, has the same meaning as in section 7 (interpretation) of the Acquisition of Land Act 1981**(10)**;

(3) 1961 c. 33.

(4) 1965 c. 56.

(5) 1980 c. 66.

(6) 1981 c. 66.

(7) 1990 c. 8.

(8) 1991 c. 22.

(9) 1981 c. 69. Subsection (1) was amended by section 51 of, and paragraphs 1 and 2 of Part 1 of Schedule 5 to, the Countryside and Rights of Way Act 2000 (c. 37).

(10) 1981 c. 67. The definition of “owner” was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.

“restricted byway” has the meaning given by section 48(4) of the Countryside and Rights of Way Act 2000(11);

“the scheduled work” means the work specified in Schedule 1 (scheduled work) to this Order or any part of it;

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

“street” has the meaning given in section 48 (streets, street works and undertakers) of the 1991 Act;

“street authority”, in relation to a street, has the same meaning as in Part 3 (street works in England and Wales) of the 1991 Act;

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

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

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface.

(3) References in this Order to points identified by letters and numbers are to be construed as references to the points so shown on the deposited plans; and references to a sheet identified by a number is a reference to the sheet of that number contained in the deposited plans.

(4) All distances, directions, lengths and points stated in the description of the scheduled work or in any description of powers or lands are approximate, and the distance between the points on the scheduled work are taken to be measured along the scheduled work.

(5) References in this Order to Work No. 1 is a reference to the scheduled work as numbered in Schedule 1.

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

3.—(1) Network Rail may construct and maintain the scheduled work.

(2) Subject to article 4 (power to deviate), the scheduled work may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (6), Network Rail may carry out and maintain within the Order limits such works as are required—

- (a) to provide the footpaths and bridleways specified in column (4) of Part 1 of Schedule 3 (level crossings and highways to be stopped up);
- (b) in connection with the extinguishment of the rights of way specified in column (3) of Parts 1 and 2 of Schedule 3; and
- (c) in connection with the upgrading of the footpaths specified in columns (2) and (3) of Schedule 5 (upgrading of certain footpaths to bridleways).

(4) Subject to paragraph (6), 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 work and the works mentioned in paragraph (3), namely—

- (a) works to lay out footpaths and bridleways including any surfacing, fencing, stiles, gates, signs, ramps, steps and other means of access;
- (b) works to alter, or alter the position of, apparatus, including mains, sewers, drains and cables;
- (c) works to erect and construct such offices and other buildings, yards, slab, cranes, plant and machinery, apparatus, and other works and conveniences;
- (d) make, provide and maintain all such bridges, mounting blocks, approaches, roadways, walkways, retaining structures and means of access;
- (e) signalling works and telecommunications works;
- (f) works to alter the course of, or otherwise interfere with, watercourses;
- (g) landscaping, environmental and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled work; and
- (h) works for the benefit or protection of land or premises affected by the scheduled work.

(5) Subject to paragraph (6), 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 scheduled work and works described in paragraphs (3) and (4), other than works that would interfere with a navigable watercourse.

(6) Paragraphs (3) to (5) only authorise the carrying out or maintenance of works—

- (a) within the limits of deviation; or
- (b) on land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) for the purposes specified in relation to that land in column (3) of that Schedule.

Power to deviate

4. In constructing or maintaining the scheduled work, 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 sections to any extent not exceeding 0.5 metres upwards or downwards.

Streets

Level crossings and highways to be stopped up

5.—(1) Subject to the provisions of this article, the level crossings listed in column (2) of Parts 1 and 2 of Schedule 3 (level crossings and highways to be stopped up) are stopped up and discontinued.

(2) Upon the stopping up and discontinuance of the level crossings referred to in paragraph (1)—

- (a) all rights of way (whether public or private) over those crossings are extinguished; and
- (b) all public rights of way over the highways specified in column (3) of Parts 1 and 2 of Schedule 3 are extinguished to the extent specified by reference to the points identified by letters and numbers.

(3) Paragraph (2)(a) has effect regardless of anything in section 68 (accommodation works by company) of the Railways Clauses Consolidation Act 1845(12) as incorporated in the Felixstowe Railway and Pier Act 1875(13) or any other enactment or instrument.

(4) Upon the stopping up and discontinuance of Grimston Lane Level Crossing, section 15(5)(b) (further works and powers) of the British Transport Commission Act 1959(14) ceases to have effect.

(5) Upon the stopping up and discontinuance of Keeper’s Lane Level Crossing, the Railtrack Keeper’s Lane Level Crossing Order 1999(15) is revoked.

(6) In respect of the level crossings listed in Part 1 of Schedule 3, paragraphs (1) and (2) are not to have effect until the new highway or highways specified in column (4) in relation to that level crossing has or have been provided to the reasonable satisfaction of the highway authority in accordance with article 6 (creation and maintenance of new footpaths or bridleways) and is or are open for use.

(7) Any person who suffers loss by reason of 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) This article is subject to Schedule 4 (apparatus and rights of statutory undertakers etc. in stopped up highways).

Creation and maintenance of new footpaths or bridleways

6.—(1) The new footpaths and bridleways specified in column (4) of Part 1 of Schedule 3 (level crossings and highways to be stopped up) are to be completed to the reasonable satisfaction of the highway authority and are to be maintained by and at the expense of Network Rail for a period of 12 months from their completion and from the expiry of that period by and at the expense of the highway authority.

(2) Paragraph (1) does not apply in relation to the structure of the bridge forming Work No. 1.

(3) On completion of each new footpath or bridleway in accordance with paragraph (1), a public right of way over it is created by virtue of this paragraph which has the legal status specified in column (5) of Part 1 of Schedule 3.

(4) Section 28 (compensation for loss caused by public path creation order)(16) of the 1980 Act is to apply to each new footpath or bridleway specified in column (4) of Part 1 of Schedule 3 as if the footpath or bridleway had been created by an order under section 26(17) (compulsory powers for the creation of footpaths, bridleways and restricted byways) of that Act.

(5) In its application by virtue of paragraph (4), section 28 of the 1980 Act is to have effect with the modifications mentioned in paragraphs (6) to (8).

(6) In subsection (1), for “the authority by whom the Order was made” substitute “Network Rail Infrastructure Limited”.

(7) For subsection (2), substitute—

“(2) A claim for compensation under this section is to be made to Network Rail Infrastructure Limited in writing within 6 months from the completion of the public right of way concerned in accordance with article 6(1) of the Network Rail (Felixstowe Branch

(12) 1845 c. 20.

(13) 1875 c. cxiv.

(14) 1959 c. xliv.

(15) An order made by the Secretary of State under section 1 of the Level Crossings Act 1983 (c. 16) on 8th March 1999 and which came into force on 21st March 1999.

(16) Section 28 has been amended by S.I. 2006/1177.

(17) Section 26 has been amended by section 1(6) of, and paragraphs 1, 18(1) to (4) of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7) and by S.I. 2006/1177.

Line Improvements – Level Crossings Closure) Order 2018(18) 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.”.

(8) Omit subsection (3).

(9) For the purposes of paragraphs (4) to (8), section 307 (disputes as to compensation which are to be determined by Lands Tribunal and related provisions) of the 1980 Act, in its application to section 28 by virtue of section 307(1), has effect as if in subsection (2) for “the authority from whom the compensation in question is claimed”, the words “Network Rail Infrastructure Limited” were substituted.

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

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

- (a) the character of the new footpath or bridleway and the use which was reasonably expected to be made of it;
- (b) the standard of maintenance appropriate for a footpath or bridleway of that character and so used;
- (c) the state of repair in which a reasonable person would have expected to find the new footpath or bridleway;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new footpath or bridleway to which the action relates was likely to cause danger to users of the new footpath or bridleway; and
- (e) where Network Rail could not reasonably have been expected to repair that part of the new footpath or bridleway before the cause of action arose, what warning notices of its condition had been displayed,

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

(12) A new footpath or bridleway is to be treated as completed to the satisfaction of the highway authority for the purpose of paragraph (1) if it fails to reply to a request for certification that the footpath or bridleway has been so completed within 28 days of receiving the request.

Upgrading of certain footpaths to bridleways

7.—(1) On the completion in accordance with article 6(1) of the new bridleways specified in column (4) of Part 1 of Schedule 3 (level crossings and highways to be stopped up) in the entry relating to Keeper’s Lane Level Crossing, the highways specified in column (2) of Schedule 5 (upgrading of certain footpaths to bridleways) cease to be designated as footpaths on the definitive map and statement and are to be designated as described in column (4) of that Schedule.

(2) In each case where a footpath has been redesignated, the redesignation is to have effect as if that footpath had been stopped up and immediately designated as a bridleway.

(3) Any person who suffers loss by reason of the change of status of the footpaths mentioned in paragraph (1) is entitled to compensation to be determined, in the case of dispute, under Part 1 of the 1961 Act.

Power to survey and investigate land

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

- (a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;
- (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 of 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
- (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 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⁽¹⁹⁾; or
- (b) Council [Directive 92/42/EEC](#) of 21 May 1992 on the conservation of natural habitats and wild fauna and flora⁽²⁰⁾.

(6) If Network Rail obtains a warrant 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 a 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);

⁽¹⁹⁾ OJ No. L 26, 28.1.2012, p. 1.

⁽²⁰⁾ OJ No. L 206, 22.7.1992, p. 7.

- (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 land 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.
- (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.
- (16) Paragraphs (1) to (15) apply in relation to Crown land, however a person may only exercise the power conferred by paragraph (1) in relation to Crown land if the person has the permission of the appropriate authority.
- (17) Nothing in this article overrides the requirement to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979⁽²¹⁾.
- (18) In this article, “Crown land” and “the appropriate authority” have the meaning given in section 293⁽²²⁾ (preliminary definitions) of the 1990 Act.

Temporary stopping up and diversion of streets

9.—(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—

⁽²¹⁾ 1979 c. 46.

⁽²²⁾ As amended by paragraph 6 of schedule 3 to the Planning and Compulsory Purchase Act 2004 (c. 5), paragraph 7(1) and (4) of Schedule 7 to the Planning (Wales) Act 2015 (anaw 4) and paragraphs 1 and 33 of Schedule 12 to the Housing and Planning Act 2016 (c. 22).

- (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 on a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.
- (4) Without limitation on the scope of paragraph (1), Network Rail may temporarily stop up or divert the streets specified in columns (1) and (2) of Schedule 6 (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 the refusal that street authority is deemed to have granted consent.

PART 3

ACQUISITION OF LAND

Powers of acquisition

Power to acquire land

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

- (a) so much of the land shown on the deposited plans which is within the limits of deviation as land to be acquired compulsorily and described in the book of reference as may be required for the purposes of the authorised works; and
- (b) so much of the land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) (being land shown on the deposited plans and described in the book of reference) as may be required for the purposes specified in relation to that land in column (3) of that Schedule,

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

(2) This article is subject to article 13 (power to acquire new rights) and article 14 (temporary use of land for construction of works).

Application of Part 1 of the 1965 Act

11.—(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(23) applies; and
 - (b) as if this Order were a compulsory purchase order under that Act.
- (2) Part 1 of the 1965 Act, as so applied, has effect with the following modifications.
- (3) Omit section 4 (which provides a time limit for compulsory purchase of land).
- (4) In section 4A(1)(24) (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 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 18 (time limit for exercise of powers of acquisition) of the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018(25)”.
- (5) In section 11(1B)(26) (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(27) (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 18 (time limit for exercise of powers of acquisition) of the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018”.
- (8) In Schedule 2A(28) (counter-notice requiring purchase of land not in notice to treat)—
- (a) omit paragraphs 1(2) and 14(2); and
 - (b) after paragraph 29, insert—

“PART 4

INTERPRETATION

30. In this Schedule, references to entering on and taking possession of land do not include doing so under article 14 (temporary use of land for construction of works) of the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018.”

Application of the 1981 Act

- 12.**—(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.
- (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(29) (time limit for general vesting declaration).

(23) 1981 c. 67.

(24) Inserted by section 202(1) of the Housing and Planning Act 2016 (c. 22).

(25) S.I. 2018/937.

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

(27) Inserted by section 186(3) of the Housing and Planning Act 2016.

(28) As inserted by section 199(1) of, and paragraphs 1 and 3 of Schedule 17 to, the Housing and Planning Act 2016.

(29) Inserted by section 182(2) of the Housing and Planning Act 2016.

(5) In section 5B(1)(30) (extension of time limit during challenge) for “section 23 of the Acquisition of Land 1981 (application to the 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 18 (time limit for exercise of powers of acquisition) of the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018”.

(6) In section 6(31) (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(32) of the Transport and Works Act 1992”.

(7) In section 7(33) (constructive notice to treat), in subsection (1)(a), omit “(as modified by section 4 of the Acquisition of Land Act 1981)”.

(8) In Schedule A1(34) (counter-notice requiring purchase of land not in general vesting declaration), omit paragraph 1(2).

(9) References to the 1965 Act are to be construed as references to that Act as applied to the acquisition of land under article 10 (power to acquire land).

Power to acquire new rights

13.—(1) Network Rail may acquire compulsorily such easements or other rights over any land referred to in paragraph (1) of article 10 (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 land specified in columns (1) and (2) of Schedule 7 (land in which only new rights may be acquired) Network Rail’s powers of compulsory acquisition are limited to the acquisition of such new rights as may be required for the purpose specified in relation to that land in column (3) of that Schedule.

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

(4) Schedule 8 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 article of a right over land by the creation of a new right.

Temporary Possession of Land

Temporary use of land for construction of works

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

(a) enter upon and take temporary possession of—

(i) the land specified in columns (1) and (2) of Schedule 9 (land of which temporary possession may be taken) for the purpose specified in relation to that land in column (3) of that Schedule; and

(30) Inserted by section 202(2) of the Housing and Planning Act 2016.

(31) As 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.

(32) Inserted by S.I. 2017/16.

(33) As amended by paragraph 3 of Schedule 18 to the Housing and Planning Act 2016.

(34) As inserted by paragraph 6 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

(ii) any other land within the Order limits in respect of which no notice of entry has been served under section 11(35) (powers of entry) of the 1965 Act (other than in connection with the acquisition of rights only) and no declaration has been executed under section 4(36) (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;
- (d) construct any works required as mentioned in article 3(3) (power to construct and maintain works) including in particular the works mentioned in article 3(4)(a); and
- (e) construct any mitigation works on that land.

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

(3) Network Rail may not, without the agreement of the owners of the land, remain in possession of any land under this article after the end of the period of one year beginning with the date of completion of the authorised works for which temporary possession of that land was taken.

(4) Before giving up possession of land of which temporary possession has been taken under this article, Network Rail must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but Network Rail is not required to replace a building removed in connection with the carrying out of the authorised works or restore the land on which any permanent works have been constructed under paragraph (1)(d) or (e).

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

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

(7) Without affecting article 26 (no double recovery), nothing in this article affects any liability to pay compensation under section 10(2)(37) (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 (5).

(8) The powers of compulsory acquisition of land conferred by this Order do not apply in relation to the land referred to in paragraph (1)(a)(i) except that Network Rail is not precluded from acquiring new rights over any part of that land under article 13 (power to acquire new rights).

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

(10) Section 13(38) (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 acquisition of land under this Order by virtue of article 11(1) (application of Part 1 of the 1965 Act).

(35) 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 and S.I. 2009/1307.

(36) 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.

(37) 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.

(38) Section 13 was amended by sections 62(3), 139 and 146 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).

Compensation

Disregard of certain interests and improvements

15.—(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.

Set-off for enhancement in value of retained land

16.—(1) In assessing the compensation payable to any person in respect of the acquisition from that person under this Order of any land (including the subsoil) the tribunal must set off against the value of the land so acquired any increase in value of any contiguous or adjacent land belonging to that person in the same capacity which will accrue to that person by reason of the construction of the authorised works.

(2) In assessing the compensation payable to any person in respect of the acquisition from that person of any new rights over land (including the subsoil) under article 13 (power to acquire new rights), the tribunal must set off against the value of the rights so acquired—

- (a) any increase in the value of the land over which the new rights are required; and
- (b) any increase in value of any contiguous or adjacent land belonging to that person in the same capacity,

which will accrue to him by reason of the construction of the authorised works.

(3) The 1961 Act has effect, subject to paragraphs (1) and (2), as if this Order were a local enactment for the purposes of that Act.

Supplementary

Extinction of private rights of way

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

- (a) as from the date of acquisition of the land by Network Rail, whether compulsorily or by agreement; or
- (b) on the date of entry on the land by Network Rail under section 11(1) (powers of entry) of the 1965 Act,

whichever is the sooner.

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

(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

(4) .

(5) This article does not apply in relation to any right of way to which section 271 or 272(39) (extinguishment of rights of statutory undertakers etc.) of the 1990 Act applies.

(6) Paragraphs (1) to (3) have effect subject to—

(a) any notice given by Network Rail before—

- (i) the completion of the acquisition of the land;
- (ii) Network Rail's appropriation of it; or
- (iii) Network Rail's entry on to 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 at any time between Network Rail and the person in or to whom the right of way in question is vested or belongs.

(7) If any such agreement as is referred to in paragraph (5)(b)—

- (a) is made with a person in or to whom the right of way is vested or belongs; and
- (b) is expressed to have effect also for the benefit of those deriving title from or under that person,

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

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

- (a) no notice to treat is to be served under Part 1 of the 1965 Act as applied to the acquisition of land by article 11 (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 12 (application of the 1981 Act).

(2) The powers conferred by article 14 (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 of it was taken before the end of that period.

PART 4

MISCELLANEOUS AND GENERAL

Planning permission

19. Planning permission which is deemed by a direction under section 90(2A)(40) (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 operational land for the purposes of that Act) of that Act.

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

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

Power to transfer undertaking

20.—(1) Network Rail may, with the consent of the Secretary of State—

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

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

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

Application of landlord and tenant law

21.—(1) This article applies to—

- (a) any agreement for leasing to any person the whole or any part of the authorised works or the right to operate the same; and
- (b) any agreement entered into by Network Rail with any person for the construction, maintenance, use or operation of the authorised works, or any part of them,

so far as any such agreement relates to the terms on which any land which is the subject of a lease granted by or under that agreement is to be provided for that person’s use.

(2) No enactment or rule of law regulating the rights and obligations of landlords and tenants affects the operation of any agreement to which this article applies.

(3) No such enactment or rule of law applies in relation to the rights and obligations of the parties to any lease granted by or under any such agreement so as to—

- (a) exclude or in any respect modify any of the rights and obligations of those parties under the terms of the lease, whether with respect to the termination of the tenancy or any other matter;
- (b) confer or impose on any such party any right or obligation arising out of or connected with anything done or omitted to be done on or in relation to land which is the subject of the lease, in addition to any such right or obligation provided for by the terms of the lease; or
- (c) restrict the enforcement (whether by action for damages or otherwise) by any party to the lease of any obligation of any other party under the lease.

Defence to proceedings in respect of statutory nuisance

22.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990⁽⁴¹⁾ in relation to a nuisance falling within paragraph (g) of section 79(1)⁽⁴²⁾ (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act, no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

⁽⁴¹⁾ 1990 c. 43. Section 82 was amended by section 5 of the Noise and Statutory Nuisance Act 1993 (c. 40), paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25), section 103(1), (4) and (5) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and S.I. 2015/664.

⁽⁴²⁾ There are amendments to section 79 not relevant to this Order.

- (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 authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites) or a consent given under section 61(43) (prior consent for work on construction sites) of the Control of Pollution Act 1974(44); or
- (b) that the nuisance is a consequence of the operation 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 does not apply where the consent relates to the use of premises by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) 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(45) or any rule of common law having similar effect.

Obstruction of construction of authorised works

23. 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 works; 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.

Certification of plans etc.

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

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

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8), by electronic transmission.

(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.

(43) 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 (c. 25) and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(44) 1974 c. 40.

(45) 1993 c. 43.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978⁽⁴⁶⁾ 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, that person's last known address 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 transmission given by a person may be revoked by that person in accordance with paragraph (8).

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

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
- (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.

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

No double recovery

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

Arbitration

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

⁽⁴⁶⁾ 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.

The Neighbourhood Planning Act 2017

28. The provisions of Chapter 1 of Part 2 of the Neighbourhood Planning Act 2017 do not apply as regards this Order.

Signed by authority of the Secretary of State for Transport

5th September 2018

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

SCHEDULES

SCHEDULE 1

Article 2

SCHEDULED WORK

In the County of Suffolk, Suffolk Coastal District, Parish of Trimley St Martin—

Work No. 1 – A bridge, incorporating ramps and stairs, over the Felixstowe Branch Line railway commencing on restricted byway 28 at a point 105 metres east of the junction of public footpath 29 with restricted byway 27 and terminating at a point 20 metres north-east of its commencement.

SCHEDULE 2

Article 3(6) and 10(1)

ACQUISITION OF CERTAIN LANDS FOR ANCILLARY WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the land plan</i>	<i>(3)</i> <i>Purpose for which land may be acquired</i>
County of Suffolk, Suffolk Coastal District	1, 3, 4, 5, 6, 18, 23, 46	Provision of a new highway
Parish of Trimley St Martin	9, 12, 19, 29, 34, 48	Provision of environmental mitigation
	14	Provision of a new highway and access for maintenance works
County of Suffolk, Suffolk Coastal District	20, 21, 22	Provision of environmental mitigation
Parish of Trimley St Mary	24, 25, 26, 50, 51, 53	Provision of a new highway

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SCHEDULE 3

Articles 3(3), 5, 6 and 7

LEVEL CROSSINGS AND HIGHWAYS TO BE STOPPED UP

PART 1

LEVEL CROSSINGS AND HIGHWAYS TO BE STOPPED UP SUBJECT TO OPENING OF NEW HIGHWAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Level crossing to be stopped up and discontinued</i>	<i>(3)</i> <i>Highway or part of highway to be stopped up</i>	<i>(4)</i> <i>Alternative(s) to be provided</i>	<i>(5)</i> <i>Status of new highway</i>
County of Suffolk, Suffolk Coastal District, Parish of Trimley St Martin	Thorpe Common	Public Footpath 1 between points P1 and P2	New footpath between points P1, P3, Thorpe Lane and new footpath between point P4 and point P2	Footpath
	Trimley	Public Footpath 33 between points P7 and P8	New footpath between points P7 and P9, new footpath over stairs forming part of Work No. 1, new Bridleway over Work No. 1, new footpath over stairs forming part of Work No. 1, new footpath between points P10, P11, Footpath 30, Footpath 33 (on Sheet No. 2) to point P8 (on Sheet No. 3)	Footpath (except Bridleway over Work No. 1)
	St Martin's	Public Footpaths 29 and 30 between points P9 and P11	New footpath between point P9 and stairs forming part of Work No. 1, new footpath over stairs forming part of Work No. 1, new bridleway over Work No. 1, new footpath over stairs forming part of Work No. 1, new footpath between points P10 and P11 New footpath between points P10 and P14	Footpath (except Bridleway over Work No. 1)

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

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Level crossing to be stopped up and discontinued</i>	<i>(3)</i> <i>Highway or part of highway to be stopped up</i>	<i>(4)</i> <i>Alternative(s) to be provided</i>	<i>(5)</i> <i>Status of new highway</i>
	Gun Lane	Restricted byway 28 (Gun Lane) between points P12 and P13	New Bridleway between point P12 and Work No. 1, new bridleway over Work No. 1, new bridleway between points P14 and P13	Bridleway
County of Suffolk, Suffolk Coastal District, Parish of Trimley St Mary	Keeper's Lane	Bridleway 22 Between points P15 and P16	New bridleway between points P15, P17, P18 (on Sheet No. 3) and P19, Restricted byway 27, to point P20, Restricted byway 28, to point P12, new bridleway to Work No. 1, new bridleway over Work No. 1, new bridleway between points P14 and P13, Restricted byway 28 to point P21 (on Sheet No. 2) public footpath 2 (to be upgraded to bridleway under article 7 and Schedule 5) between points P21, P22, P23 and P24 (on Sheet No. 4), Bridleway 22 to point P16	Bridleway

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PART 2

LEVEL CROSSING AND HIGHWAY TO BE STOPPED UP NOT SUBJECT TO OPENING OF NEW HIGHWAY

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Level crossing to be stopped up and discontinued</i>	<i>(3)</i> <i>Highway or part of highway to be stopped up</i>
County of Suffolk, Suffolk Coastal District, Parish of Trimley St Martin	Grimston Lane	Public Footpath 51 (Grimston Lane) between points P5 and P6

SCHEDULE 4

Article 5

APPARATUS AND RIGHTS OF STATUTORY UNDERTAKERS ETC. IN STOPPED UP HIGHWAYS

1.—(1) On the stopping up of any level crossing or highway under article 5 (level crossings and highways to be stopped up) any statutory utility whose apparatus is under, in, upon, along or across that level crossing or highway has the same powers and rights in respect of that apparatus, subject to the provisions of this Schedule, as if this Order had not been made.

(2) On the stopping up of any level crossing or highway under article 5 any statutory utility whose apparatus is under, in, upon, over, along or across that level crossing or highway may, and if reasonably requested to do so by Network Rail must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in that other position.

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

- (a) the execution of the relocation works required in consequence of the stopping up of the level crossing or highway concerned; and
- (b) the doing of any other work or thing rendered necessary by the execution of the relocation works.

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

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which

apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

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

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by Network Rail and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this Schedule—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work executed, or apparatus provided, under sub-paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) (interpretation) of the Communications Act 2003⁽⁴⁷⁾.

SCHEDULE 5

Articles 3(3) and 7

UPGRADING OF CERTAIN FOOTPATHS TO BRIDLEWAYS

(1) <i>Area</i>	(2) <i>Footpath to be stopped up</i>	(3) <i>Extent of stopping up</i>	(4) <i>Bridleway to be substituted</i>
County of Suffolk, Suffolk Coastal District, Parish of Trimley St. Mary	Public Footpath 1	Between points P25 and P26	Bridleway between points P25 and P26
County of Suffolk, Suffolk Coastal District,	Public Footpath 2 (as shown on the	Between points P21, P22, P23 and P24 (on Sheet No. 4)	Bridleway between points P21, P22,

(47) 2003 c. 21. There are amendments to section 151(1) not relevant to this Order.

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Footpath to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>Bridleway to be substituted</i>
Parishes of Trimley St. Mary and Trimley St. Martin	definitive map and statement)		P23 and P24 (on Sheet No. 4)

SCHEDULE 6

Article 9

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be temporarily stopped up</i>	<i>(3)</i> <i>Extent of temporary stopping up</i>
County of Suffolk, Suffolk Coastal District, Parish of Trimley St Martin	Public Footpath 1	Between points P1 and P2
	Public Footpath 4	Within Order limits
	Footpath 33	Between points P7 and P8
	Footpaths 29 and 30	Within Order limits
	Restricted byway 3 (Gun Lane)	Within Order. limits
	Restricted byway 28 (Gun Lane)	Within Order limits
County of Suffolk, Suffolk Coastal District, Parish of Trimley St Mary	Bridleway 22	Between points P15 and P16
County of Suffolk, Suffolk Coastal District, Parishes of Trimley St. Martin and Trimley St. Mary	Public Footpath 2 (as shown on Ordnance Survey mapping)	Between points P21, P23 and P24 (on Sheet No. 4)
	Public Footpath 2 (as shown on the definitive map and statement)	Between points P21, P22, P23 (on Sheet No. 4) and P24
	Public Footpath 1	Between points P25 and P26

SCHEDULE 7

Article 13

LAND IN WHICH ONLY NEW RIGHTS MAY BE ACQUIRED

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the land plan</i>	<i>(3)</i> <i>Purpose for which rights may be acquired</i>
County of Suffolk, Suffolk Coastal District, Parish of Trimley St Martin	15, 16, 17, 32, 33, 35, 37, 40, 41	Access for maintenance works
County of Suffolk, Suffolk Coastal District, Parish of Trimley St Mary	38, 39, 42, 43	Access for maintenance of works

SCHEDULE 8

Article 13

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without limitation on the scope of paragraph 1, the 1961 Act has effect subject to the modifications set out in sub-paragraphs (2).

(2) For section 5A(5A) (relevant valuation date) of the 1961 Act substitute—

“(5A) If—

- (a) the acquiring authority enters on land for the purposes of exercising a right in pursuance of a notice of entry under section 11(1) of the 1965 Act (as modified by paragraph 5(5) of Schedule 8 to the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018 (“the 2018 Order”)),
- (b) the acquiring authority is subsequently required by a determination under paragraph 12 of Schedule 2A to the 1965 Act (as substituted by paragraph 5(8) of Schedule 8 to the 2018 Order) to acquire an interest in the land, and
- (c) the acquiring authority enters on and takes possession of that land,

the authority is deemed for the purposes of subsection (3)(a) to have entered on that land when it entered on that land for the purpose of exercising that right.”.

3.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(48) has effect subject to the modifications set out in sub-paragraph (2).

(48) 1973 c. 26.

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(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 5(3)—

- (a) for the words “land is acquired or taken” substitute “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” substitute “over which the right is exercisable”.

Application of Part 1 of the 1965 Act

4. Part 1 of the 1965 Act, as applied by article 11 (application of Part 1 of the 1965 Act) to the acquisition of land under article 10(1) (power to acquire land) applies to a compulsory acquisition of rights under article 13 (power to acquire new rights)—

- (a) with the modifications specified in paragraph 5; and
- (b) with such other modifications as may be necessary.

5.—(1) The modifications referred to in paragraph 4(a) are as follows.

(2) References in the 1965 Act to land are, in appropriate contexts, to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired, or
- (b) the land over which the right is, or is to be, exercisable.

(3) For section 7 (measure of compensation in the case of severance) of the 1965 Act substitute—

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had, not only to the extent (if any) to which the value of the land over which the right is acquired is depreciated by the acquisition of the right, but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

(4) The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure of owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be acquired compulsorily is vested absolutely in the acquiring authority.

(5) Section 11(49) (powers of entry) of the 1965 Act is modified so as to secure that, where the acquiring authority have served notice to treat in respect of any right as well as the notice of entry required by subsection (1) of that section (as it applies to a compulsory acquisition under article 10(1) (application of Part 1 of the 1965 Act)), they have power, exercisable in the same circumstances and subject to the same conditions, to enter for the purpose of exercising that right; and sections 11A(50)

(49) 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 6 to, the Housing and Planning Act 2016 (c. 22) and S.I. 2009/1307.

(50) Section 11A was inserted by section 186(3) of the Housing and Planning Act 2016 (c. 22).

(powers of entry: further notices of entry), 11B(51) (counter-notice requiring possession to be taken on specified date), 12(52) (penalty for unauthorised entry) and 13(53) (refusal to give possession to acquiring authority) of that Act are modified accordingly.

(6) Section 20(54) (protection for interests of tenants at will, etc) of the 1965 Act applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of the land, but taking into account only the extent (if any) of such interference with such interests as is actually caused, or likely to be caused, by the exercise of the right in question.

(7) Section 22 (interests omitted from purchase) of the 1965 Act (as modified by article 11(7)) is modified so as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

(8) For Schedule 2A(55) to the 1965 Act substitute—

“SCHEDULE 2A

COUNTER-NOTICE REQUIRING PURCHASE OF LAND

Introduction

1. This Schedule applies where an acquiring authority serve a notice to treat in respect of a right over a house, building or factory.
2. In this Schedule, “house” includes any park or garden belonging to a house.

Counter-notice requiring purchase of land

3. A person who is able to sell the house, building or factory (“the owner”) may serve a counter-notice requiring the authority to purchase the owner’s interest in the house, building or factory.
4. A counter-notice under paragraph 3 must be served within the period of 28 days beginning with the day on which the notice to treat was served.

Response to counter-notice

5. On receiving a counter-notice, the acquiring authority must decide whether to—
 - (a) withdraw the notice to treat,
 - (b) accept the counter-notice, or
 - (c) refer the counter-notice to the Upper Tribunal.
6. The authority must serve notice of their decision on the owner within the period of 3 months beginning with the day on which the counter-notice is served (“the decision period”).
7. If the authority decide to refer the counter-notice to the Upper Tribunal they must do so within the decision period.

(51) Section 11B was inserted by section 187(2) of the Housing and Planning Act 2016.

(52) Section 12 was amended by section 56(2) of, and Part 1 of Schedule 9 to, the Courts Act 1971 (c. 23) and paragraph 4 of Schedule 16 to the Housing and Planning Act 2016.

(53) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 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).

(54) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34) and S.I. 2009/1307.

(55) Inserted by section 199(1) and paragraphs 1 and 3 of Part 1 of Schedule 17 to the Housing and Planning Act 2016.

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8. If the authority do not serve notice of a decision within the decision period they are to be treated as if they had served notice of a decision to withdraw the notice to treat at the end of that period.

9. If the authority serve notice of a decision to accept the counter-notice, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in the house, building or factory.

Determination by Upper Tribunal

10. On a referral under paragraph 7, the Upper Tribunal must determine whether the acquisition of the right would—

- (a) in the case of a house, building or factory, cause material detriment to the house, building or factory, or
- (b) in the case of a park or garden, seriously affect the amenity or convenience of the house to which the park or garden belongs.

11. In making its determination, the Upper Tribunal must take into account—

- (a) the effect of the acquisition of the right,
- (b) the proposed use of the right, and
- (c) if the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use of the other land.

12. If the Upper Tribunal determines that the acquisition of the right would have either of the consequences described in paragraph 10, it must determine how much of the house, building or factory the authority ought to be required to take.

13. If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the compulsory purchase order and the notice to treat are to have effect as if they included the owner’s interest in that land.

14.—(1) If the Upper Tribunal determines that the authority ought to be required to take some or all of the house, building or factory, the authority may at any time within the period of 6 weeks beginning with the day on which the Upper Tribunal makes its determination withdraw the notice to treat in relation to that land.

(2) If the authority withdraws the notice to treat under this paragraph they must pay the person on whom the notice was served compensation for any loss or expense caused by the giving and withdrawal of the notice.

(3) Any dispute as to the compensation is to be determined by the Upper Tribunal.”

SCHEDULE 9

Article 14

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
County of Suffolk, Suffolk Coastal District,	2	Provision of a temporary right of way

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<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on the deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>
Parish of Trimley St Martin	7, 13, 27, 28, 32, 33, 36, 37, 45, 47	Construction worksite and access
County of Suffolk, Suffolk Coastal District,	38, 39, 49	Construction worksite and access
Parish of Trimley St Mary	44	Construction worksite and access, provision of a temporary right of way

EXPLANATORY NOTE

(This note is not part of the Order)

This Order authorises Network Rail Infrastructure Limited to construct a bridge over the Felixstowe Branch Line railway and close six level crossings over that railway. The Order also authorises the stopping up and diversion of public rights of way.

The Order also authorises the compulsory acquisition and temporary use of land for the purposes of the works authorised under the Order and confers powers in connection with the construction and operation of the works.

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