This memorandum explains the purpose and effect of each article and schedule in the draft Order, as required by Rule 10(2)(b) of the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006\(^1\).

Application for the Order has been made by West Yorkshire Passenger Transport Executive and Network Rail Infrastructure Limited ("the promoter"). The Order would confer powers on the promoter to construct a new station entrance on the southern boundary of Leeds Railway Station. The new entrance will be constructed on piers sunk into the bed of the Aire and Calder Navigation.

The Order authorises the acquisition and use of land for the purposes of the works and confers powers in connection with the construction and operation of the new station entrance.

The draft Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006\(^2\) ("the model clauses"), but on occasion it departs from them. Where there is a significant departure from the model clauses, an explanation is provided below.

**PART 1**

**PRELIMINARY**

Preliminary provisions

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

**Article 2 (Interpretation)** contains provisions for the interpretation of words and phrases used in the Order.

**Article 3 (Application of the 1991 Act)** provides for the application of the New Roads and Street Works Act 1991\(^3\). Article 3(2) is not a Model Clause but is well precedented eg the Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation)
Order 2007\(^4\). The effect of the amendment is to increase the number of provisions contained in the New Road and Street Works Act 1991 which are not to have effect in relation to the powers exercisable under the terms of this Order.

**PART 2**

**WORKS PROVISIONS**

**Principal Powers**

**Article 4** *(Power to construct and maintain works)* authorises the construction and maintenance of the principal works proposed (“the scheduled works”) which are described in Schedule 1 to the Order and shown on the plans and sections deposited in connection with the application. Article 4(3) and (4) authorises the construction of the works described in Schedules 2, 9 and 10. Article 4 also provides for the construction and maintenance of works necessary or expedient for the purposes of the authorised works. These ancillary works are specified in paragraph (4) and include, in an extension to the model clauses, descriptions of types of works which it is envisaged are likely to be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works. The carrying out or maintenance of works outside the limits of deviation may be done only on land which is within the Order limits.

Article 4 also makes provision for the disapplication of certain provisions relating to the construction of works in that part of the Aire and Calder Navigation identified within the limits shown on the deposited plans. Each of the enactments listed under article 4(7) make provision for consenting mechanisms to be established for particular work proposals. The promoter considers that it is unnecessary for separate consents to be obtained in circumstances where this Order confers all necessary powers to construct and maintain works in and above the Aire and Calder Navigation. Article 4(7) is subject to a schedule of protective provisions inserted into Schedule 16 of the Order for the protection of the Environment Agency and paragraph 12 provides that a consent or approval given or deemed to be given by the Environment Agency under Schedule 16 shall be deemed to constitute a licence or approval for the purposes of each of those enactments listed in article 4(7) of the Order.

Article 4 enables the promoter to carry out and maintain (within the limits of deviation for the scheduled works or the limits of land to be acquired or used) landscaping and other works to mitigate the effects of construction, maintenance or operation as well as works which are for the benefit or protection of land. Such provision is commonly included in Orders authorising railways, for instance in article 5 of the Network Rail (Thameslink 2000) Order 2006\(^5\).

**Article 5** *(Power to deviate)* provides for limits within which the promoter can deviate in the construction and maintenance of the proposed works.

**Streets**

**Article 6** *(Power to execute street works)* confers authority on the promoter to interfere with, and execute works in or under, specified streets within the limits of deviation for the scheduled works and the limits of land to be acquired or used for the purposes of the other works proposed to be authorised by the Order. This article also authorises the promoter to place apparatus in streets for the purposes of or in connection with the construction, maintenance and use of the works. This provision is not included within the

---

\(^4\) S.I. 2007/2297.

\(^5\) S.I. 2006/3117.
model clauses but a precedent is provided by article 7 of the Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007.

Article 7 (Power to alter layout, etc, of streets) would permit the promoter to alter the layout of streets in order to accommodate the authorised works. This article provides for (i) the altering of the width of any kerb, footway or verge within the relevant streets and (ii) the carrying out of works for the provision, alteration or removal of parking place, loading bays, and (iii) traffic calming works which are of a description prescribed in the Highways (Traffic Calming) Regulations 1999 and which are carried out in compliance with those regulations. These provisions are required in order adequately to carry out required works in specified streets and is preceded in article 7 of the Nottingham Express Transit System Order 2009. Alterations proposed to be carried out under article 7(1) and which are specified in Schedule 4 to the Order do not require the consent of the local traffic authority. Alterations proposed to be carried out under article 7(2) require the consent of the local traffic authority.

Article 8 (Stopping up of streets) provides for the permanent stopping up of certain streets identified in Schedule 5. Article 8(2) prevents any stopping up of those streets identified in Schedule 5 unless one of the conditions specified in article 8(2) applies. Article 8(3) provides for the payment of compensation.

Article 9 (Temporary stopping up of streets) provides for the temporary stopping up of streets. Where the street is specified in Schedule 6, the promoter must consult the relevant street authority. If the promoter wishes temporarily to stop up streets which are not so specified in Schedule 6, it will need to obtain the consent of the relevant street authority. A street authority which fails to respond to an application for consent within 28 days of the application being made is deemed to have given its consent.

Article 10 (Access to works) confers the power to form and lay out means of access or to improve means of access to streets within the limits of deviation for the scheduled works and the limits of land to be acquired or used at the points marked on the deposited plans. Such power may be exercised without the approval of the highway authority. In respect of locations within the limits of deviation, but which are not marked on the deposited plans, the promoter’s exercise of powers to provide or improve existing access must be approved by the highway authority, such approval not to be unreasonably withheld.

Article 11 (Construction and maintenance of new or altered streets) makes provision for any new highway (other than any streets which are intended to be private streets to be completed to the reasonable satisfaction of the highway authority and unless otherwise agreed, for its maintenance by the promoter for a period of 12 months. It further provides that in relation to a street alteration or diversion, either of which must also be completed to the street authority’s satisfaction, the altered or diverted part of the street only shall be maintained by the promoter for a period of 12 months unless otherwise agreed.

Article 12 (Agreements with street authorities) authorises the promoter to enter into agreements with street authorities relating to the construction of new streets, works in or affecting streets and the stopping up, alteration and diversion of streets.

Supplemental Powers

Article 13 (Discharge of water) enables the promoter to discharge water into any watercourse, public sewer or drain in connection with the construction and maintenance of the proposed works with the approval and (if provided) superintendence of the

---

6 S.I. 2009/1300.
authority to which the watercourse, public sewer or drain belongs (such approval not to be unreasonably withheld) and subject to other conditions. A relevant authority which fails to respond to an application for consent within 28 days of the application being made is deemed to have given its consent.

**Article 14** (Protective works to buildings, roads or apparatus of a statutory undertaker) permits the promoter to carry out certain protective works before, during or after construction of the authorised works (up to a period of 5 years after that part of the authorised works is opened for use) to buildings, roads or apparatus of a statutory undertaker which may be affected by the works. Provision is made for certain restrictions and the payment of compensation. This article is not in the same form as the model clause but is based upon article 20 of the draft Chiltern Railways (Bicester to Oxford Improvements) Order.

**Article 15** (Power to survey and investigate land) confers upon the promoter power to survey and investigate land and to make trial holes after notifying the owners and occupiers of land. It includes provision for payment of compensation. Approval (which may not be unreasonably withheld) for the making of trial holes is required, in the case of a carriageway or footway from the highway authority, or in the case of a private street, from the street authority. A highway or street authority which fails to respond to an application for consent within 14 days of the application being made is deemed to have given its consent.

**Article 16** (Temporary closure of, and works in the Aire and Calder Navigation) confers upon the promoter power to temporarily close and dewater part of the Aire and Calder Navigation within the Order limits for the purposes of the construction of the authorised works. This provision is not within the model clauses but follows provisions such as article 18 of the Network Rail (West Coast Mainline Order) Order 2003.

**Article 17** (Extinguishment of navigation rights etc. in the Aire and Calder Navigation) extinguishes public and private rights of navigation within that part of the Aire and Calder Navigation which is adversely affected by the construction, use and maintenance of the proposed works. Paragraph (2) makes provision for the payment of compensation. This provision is based upon precedents such as article 36 of the Barking Barrage Order 1995.

**Article 18** (Navigation etc. in vicinity of scheduled works) establishes a defined protective zone in the vicinity of the schedule works to protect the structure and integrity of the building comprised within the schedule works. Paragraph (2) creates an offence punishable by fine not exceeding Level 3 on the Standard Scale. This provision is based upon precedents such as article 36 of the Barking Barrage Order 1995.

**Article 19** (Removal of vessels) confers power upon the promoter by notice to remove vessels which are sunk, stranded or abandoned or otherwise left in parts of the Aire and Calder Navigation. Paragraph (1) also authorises the promoter to remove, store or dispose of any vessel so found. Paragraph (2) provides that the exercise of the power conferred by paragraph (1) is subject to the taking of such action by the British Waterways Board to the extent that they are empowered so to do to deal with any sunken, stranded or abandoned vessels. Paragraph (3) makes provision for removal in an emergency. Paragraph (4) makes provision for the notification of the owner of a vessel with regard to the proposed removal, storage or disposal of a vessel. Paragraph (5) makes provision for the promoter to recover costs from the owner of any such vessel associated with recovering and disposing of a vessel. This provision is based upon precedents such as article 37 of the Barking Barrage Order 1995.

---

7 S.I. 2003/1075.
Article 20 (Arbitration in respect of removal of vessels) provides for any person served with a notice by the promoter under article 19(1) to dispute that notice by reference to an arbitration conducted under article 51 of the Order (Arbitration).

PART 3

ACQUISITION AND POSSESSION OF LAND

Powers of acquisition

Part 3 of the Order contains provisions for the compulsory acquisition of land and rights in land and for the temporary possession of land for the purposes of, or in connection with, the authorised works. It further provides for the payment of compensation.

Article 21 (Power to acquire land) confers on the promoter powers of compulsory acquisition of land within the limits of deviation and identified on the deposited plans and described in the book of reference, or in connection with the authorised works. It also authorises the compulsory acquisition of land specified in Schedule 2 for the purpose specified in that Schedule. It also provides for any land so acquired to be used for other purposes connected with or ancillary to the promoters statutory undertaking.


Article 23 (Application of the Compulsory Purchase (Vesting Declarations) Act 1981) provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 and provides for that Act to have effect subject to certain modifications. It gives the promoter the option to acquire land by this method rather than through the notice to treat procedure.

Article 24 (Power to acquire new rights) makes ancillary provision where rights over land are required. In an extension to the model clauses, article 25 enables the promoter to impose restrictive covenants over land within the limits of deviation rather than acquiring it. The provision is made because the promoter may need to impose restrictions for the protection of the scheduled works in respect of development that may be carried out on land near to the scheduled works. Schedule 8, which is introduced by article 25, makes modifications of relevant enactments concerning compensation and compulsory powers in relation to such acquisitions.

Article 25 (New rights only to be acquired in certain lands) provides for the promoter only to acquire specified rights over certain land identified in Schedule 9 to the Order. Article 25(1)(a) and (b) identify the purposes for which the powers may be exercised.

Article 26 (Rights under or over streets) permits the promoter to appropriate and use a street within the limits of deviation for the scheduled works and the limits of land to be acquired or used without being required to acquire any part of the street or any easement or right in it. Provision is made for the payment of compensation.

Temporary possession of land

Article 27 (Temporary use of land for construction of works) enables the promoter, in connection with the carrying out of the authorised works, to take temporary possession of (i) land listed in Schedule 9 and (ii) land within the scope of paragraph (1)(a)(ii) which is subject to compulsory acquisition under the Order provided the compulsory acquisition

---

8 1965 c.56.
9 1981 c.66.
process has not begun in relation to it. Paragraph (1)(a)(ii) is an addition to the model clauses. It follows the approach adopted in a number of recent Orders (eg article 26 of the Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007\textsuperscript{10}. It allows greater flexibility in the event that following detailed design of the works it is decided that only temporary occupation rather than permanent acquisition of land is required. In respect of certain specified plots of land the power of temporary occupation and use is limited to the airspace above the buildings located on the land to allow for crane oversailing, required in connection with the construction of the station building. This is provided for in article 27(3) of the Order.

**Article 28** *(Temporary use of land for maintenance of works)* provides for the promoter to take temporary possession of the land within the Order limits (other than that consisting of a house, garden or occupied building) for the purpose of maintaining the authorised or ancillary works in the five years following the opening of the railway. The promoter may construct temporary works and buildings on such land if they are reasonably required for the maintenance of the authorised or ancillary works.

*Compensation*

**Article 29** *(Disregard of certain interests and improvements)* provides that in assessing the compensation payable in respect of compulsory acquisition the Upper Tribunal shall disregard any interest in land or any enhancement of an interest in land caused by improvements which they are satisfied were created or undertaken with a view to obtaining compensation or increased compensation.

**Article 30** *(Set-off for enhancement in value of retained land)* provides that, in assessing the compensation payable to any person in respect of the acquisition of any land or new rights over land, the Upper Tribunal shall set off against the value of the land any increase in value of any contiguous or adjacent land belonging to that person arising out of the construction of the authorised works.

*Supplementary*

**Article 31** *(Acquisition of part of certain properties)* provides an alternative procedure where the promoter acquire compulsorily part only of certain types of properties subject to the right of the owner to require the whole of the property to be acquired, if part cannot be taken without material detriment to the remainder. This replaces section 8(1) of the Compulsory Purchase Act 1965.

**Article 32** *(Extinction or suspension of private rights of way)* provides for the extinguishment of private rights of way over land compulsorily acquired, and the suspension of private rights of way in respect of land temporarily occupied and for payment of compensation.

In addition to the provisions of the model clauses, paragraph (6) of this article provides for the promoter to exclude the application of any or all of the provisions of this article and to enter into agreements making contrary provision. Such provision has precedent, for example article 30 of the Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2012. That precedent has been adapted so that restrictions on powers to extinguish or suspend private rights of way in agreements are only effective if such agreements are made in contemplation of the Order.

**Article 33** *(Time limit for exercise of powers of acquisition)* imposes a time limit of five years from the coming into force of this Order for the exercise of powers of compulsory

\textsuperscript{10} S.I. 2007/2297.
acquisition of land and the temporary occupation of land under article 27 (temporary use of land for construction of works).

**PART 4**

**MISCELLANEOUS AND GENERAL**

**Article 34** *(Planning permission and supplementary matters)* modifies planning legislation in respect of the application of Tree Preservation Orders and as to the treatment of land as operational land.

**Article 35** *(Power to lop trees overhanging the authorised works)* enables the promoter to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised works and danger to passengers and users. Provision is included for compensation.

**Article 36** *(Application of landlord and tenant law)* overrides the application of landlord and tenant law insofar as it may prejudice agreements for the operation etc., of the authorised works.

**Article 37** *(Obstruction of construction of authorised works)* makes it a criminal offence without reasonable cause to obstruct the construction of the authorised works and to interfere with the promoter’s apparatus.

**Article 38** *(Traffic signs)* authorises the promoter to place and maintain traffic signs for the purposes of the authorised works and makes provision requiring the promoter to consult with and to enter into arrangements with the traffic authority for this purpose. It also modifies the Road Traffic Regulation Act 1984 to have application to the authorised works. This article is based upon a precedented provision contained in article 49 of the Nottingham Express Transit System Order 2009.

**Article 39** *(Traffic regulation)* authorises the promoter to prohibit, restrict the parking or waiting of vehicles in those parts of those streets specified in Schedule 11 to the Order and to introduce other controls on specified streets. The article also authorises the revocation of any traffic regulation order in force in so far as it is inconsistent with any such prohibition or restriction. The power is subject to the consent of the relevant traffic authority and the giving of notice prior to exercising the powers in accordance with paragraph (5). This article is based upon a precedented provision contained in article 50 of the Nottingham Express Transit System Order 2009.

**Article 40** *(Defence to proceedings in respect of statutory nuisance)* provides the promoter with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990 if it can show that works are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65 of the Control of Pollution Act 1974, or that the nuisance complained of is a consequence of the operation of the works authorised by the Order and that it cannot reasonable be avoided. Article 41 of the Network Rail (Hitchin (Cambridge Junction)) Order 2011 is a precedent.

**Article 41** *(Trespass)* makes it a criminal offence for anyone to trespass on any land being occupied by the promoter for the purpose of constructing the new station entrance. This article does not follow the corresponding model clause which extends the offence to the authorised railway. Once constructed the station building will be subject to Network

---

11 1990 c.43.
12 1974 c.40.
13 S.I. 2011/1072.
Rail’s byelaws. Accordingly, the article can be confined to the land used for the construction of the scheduled works.

**Article 42** (*Disclosure of confidential information*) makes disclosure of certain confidential information obtained upon entry to certain premises under article 14 or article 15 a criminal offence.

**Article 43** (*Statutory undertakers etc.*) introduces Schedule 11 to the Order which contains specific safeguards for statutory undertakers.

**Article 44** (*For the protection of specified undertakers*) introduces Schedule 12 which contains detailed protection for gas, electricity, water and sewerage undertakers in relation to the authorised works.

**Article 45** (*For the protection of operators of electronic communications code networks*) introduces Schedule 13 which contains detailed protection for the operators of electronic communications code networks in relation to the authorised works.

**Article 46** (*For the protection of the British Waterways Board*) introduces Schedule 14 which contains detailed protection for the British Waterways Board in relation to the authorised works.

**Article 47** (*For protection of the Environment Agency*) introduces Schedule 15 which contains detailed protection for the Environment Agency in relation to the authorised works.

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

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

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

**Article 51** (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration.
DEPARTMENT FOR TRANSPORT
2012
Rule 10(2)(b)

Transport and Works Act 1992

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

THE LEEDS RAILWAY STATION (SOUTHERN ENTRANCE) ORDER

Explanatory Memorandum

Eversheds LLP
One Wood Street
London EC2V 7WS

Solicitors and Parliamentary Agents