

Transport and Works Act 1992

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

THE CHILTERN RAILWAYS (BICESTER TO OXFORD IMPROVEMENTS) ORDER

Explanatory Memorandum

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

Application for the Order has been made by The Chiltern Railway Company Limited ("the Company"). The Order would confer powers on the Company to construct a new railway (including the reconstruction of existing railway) and associated works between Bicester and Oxford together with the construction or reconstruction of stations at Bicester Town, Islip, Water Eaton and Oxford in order to facilitate the operation of direct railway services between London Marylebone, High Wycombe, Bicester Town and Oxford. 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 railway.

The draft Order is based on the Transport and Works (Model Clauses for Railways and Tramways) Order 2006 (S.I. 2006 No. 1954) ("the model clauses"), but on occasion it departs from them. Where there is a significant departure from the model clauses, an explanation is provided below.

PART 1

PRELIMINARY

Part 1 contains 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 (Incorporation of Railways Clauses Acts) incorporates, subject to amendments, various provisions in the Railway Clauses Consolidation Act 1845 (c.20) and the Railway Clauses Consolidation Act 1863 (c.92).

Article 4 (Application of the 1991 Act) provides for the application of the New Roads and Street Works Act 1991 (c.22).

PART 2
WORKS PROVISIONS

Principal Powers

Article 5 (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 5(3) authorises the construction of the works described in column (3) of Schedule 2 on the land described in columns (1) and (2) of that Schedule. Article 5 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 specified in columns (1) and (2) of Schedule 2 or in columns (1) and (2) of Schedule 11 for the purposes specified in relation to that land in column (3) of each Schedule.

Article 5 enables the Company to carry out and maintain (within the limits of deviation for the scheduled works or the limits of land to be acquired or used generally) 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 (S.I. 2006 No. 3117).

Article 6 (Power to deviate) provides for limits within which the Company can deviate in the construction and maintenance of the proposed works.

Streets

Article 7 (Power to keep apparatus in streets) authorises the Company to place equipment and 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 model clauses but a precedent is provided by article 7 of the Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007.

Article 8 (Power to execute street works) confers authority on the Company 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 proposed works.

Article 9 (Stopping up of streets) provides for the permanent stopping up of certain streets identified in Schedule 4. Article 9(3) prevents any stopping up of those streets identified in Part 2 of Schedule 4 unless one of the conditions specified in article 9(4) applies. Where a street is closed, article 9(5) extinguishes all rights of way over it and allows the Company to use the site for the purposes of the proposed works. Article 9(6) provides for the payment of compensation.

Article 10 (Temporary stopping up of streets) provides for the temporary stopping up of streets. Where the street is specified in Schedule 5, the Company must consult the relevant street authority. If the Company wishes temporarily to stop up streets which are not so specified in Schedule 5, 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. In an

extension to the model clauses, article 9 also confers a power on the Company to use any street stopped up under the article 9 powers as temporary working site. Such provision was included within article 16 of the Network Rail (Thameslink 2000) Order 2006.

Article 11 (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 Company's exercise of powers to provide or improve existing access must be approved by the highway authority, such approval not to be unreasonably withheld. 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 12 (Construction and maintenance of new or altered streets) makes provision for any new highway (other than the streets which are intended to be private streets referred to in paragraph (6)) to be completed to the reasonable satisfaction of the highway authority and unless otherwise agreed, for its maintenance by the Company 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 Company for a period of 12 months unless otherwise agreed.

Article 13 (Construction of bridges and tunnels) provides for any bridges and tunnels for carrying a highway constructed or reconstructed under the Order to be so constructed or reconstructed in accordance with plans and specifications to be approved by the highway authority (which approval shall not be unreasonably withheld). A highway 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 (Agreements with street authorities) authorises the Company 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.

Article 15 (Replacement and closure of road level crossings) authorises the stopping up of the roads crossing the railway on the level specified in Schedule 7. The Company may only exercise the powers once it has provided a new substituted road for the road to be stopped up to the reasonable satisfaction of the street authority. The closures of level crossings are required on grounds of safety because of the increased use of the railway by the Company. The provision is not included within the model clauses. A precedent is provided by article 7 of the Network Rail (West Coast Main Line) Order 2003 (S.I. 2003 No. 1075).

Article 16 (Replacement and closure of footpath level crossings) authorises the stopping up of the footpaths which cross the railway on the level which are specified in Schedule 8. The Company may only exercise the powers once it has provided a new substituted footpath for the footpath to be stopped up. Once provided each substituted footpath becomes a public footpath and the provisions of the Highways Act 1980 relating to compensation apply. This provision is not included within the model clauses, but follows provisions included for instance in article 8 of the Network Rail (West Coast Main Line) Order 2003 (S.I. 2003 No. 1075). The closure is required on grounds of safety because of the increased use of the railway by the Company.

Article 17 (Accommodation crossings) makes provision for the extinguishment of all public or private rights of way (if any) over the accommodation crossings which are specified in Parts 1 and 2 of Schedule 9. In the case of the accommodation crossings

specified in Part 1 of Schedule 9, the Company may only exercise the powers once the substituted accommodation facility specified in relation to the accommodation crossing has been provided. Provision is made for the payment of compensation. This provision is not included in the model clauses but it follows provisions such as article 9 of the Network Rail (West Coast Main Line) Order 2004 (S.I. 2004 No. 389).

Article 18 (Temporary closure of part of Rewley Abbey Stream and Castle Mill Stream) enables the Company temporarily to close and dewater the parts of Rewley Abbey Stream and Castle Mill Stream within the Order limits for the purposes of the construction of Work Nos. 3 and 3A. Provision is made for the payment of compensation in respect of the suspension of any right. This provision is not within the model clauses but follows provisions such as article 18 of the Network Rail (West Coast Main Line) Order 2003.

Supplemental Powers

Article 19 (Discharge of water) enables the Company 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 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 20 (Protective works to buildings, roads or apparatus of a statutory undertaker) permits the Company 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.

Article 21 (Power to survey and investigate land) confers upon the Company 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.

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 and the Company's railway undertaking. It further provides for the payment of compensation.

Article 22 (Power to acquire land) confers on the Company powers of compulsory acquisition of land within the limits of deviation and identified on the deposited plans and described in the book of reference, for 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 railway undertaking.

Article 23 (*Application of Part 1 of the Compulsory Purchase Act 1965*) applies, with modifications, the provisions of Part 1 of the Compulsory Purchase Act 1965 (c.56).

Article 24 (*Application of the Compulsory Purchase (Vesting Declarations) Act 1981*) provides for the Order to apply as if it were a compulsory purchase order for the purposes of the Compulsory Purchase (Vesting Declarations) Act 1981 (c.66) and provides for that Act to have effect subject to certain modifications. It gives the Company the option to acquire land by this method rather than through the notice to treat procedure.

Article 25 (*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 Company to impose restrictive covenants in relation to land which on completion of the works will adjoin the railway. The provision is made because the Company may need to impose restrictions for the protection of the proposed railway in respect of development carried out in the land adjacent to the railway. Paragraph (4) of article 25 provides that the power to acquire rights may be exercised for the purpose of acquiring rights of access over specified land for the benefit of the owners and occupiers of land affected by the closure of accommodation crossings specified in that paragraph. It follows provision in article 23 of the Docklands Light Railway (Stratford International Extension) Order 2006 (S.I. 2006 No. 2905). Schedule 10, which is introduced by article 25, makes modifications of relevant enactments concerning compensation and compulsory powers in relation to such acquisitions.

Article 26 (*Power to acquire airspace only*) authorises the Company to acquire the airspace over any land without acquiring the whole of that land. In certain cases it will be necessary only to acquire a stratum of land above the surface (eg to accommodate a bridge over a road and in the absence of article 26 the Company would be obliged to acquire the whole interest in the land. It is based on the model clause relating to the acquisition of the subsoil but applies only to the acquisition of airspace (there are precedents for this in e.g. The Network Rail (Reading) (Land Acquisition) Order 2009 (S.I. 2009 No. 2728), article 8.

Article 27 (*Cases where powers of acquisition limited to ground anchor rights*) limits the Company's powers of compulsory acquisition under the Order to the acquisition of ground anchor rights in the subsoil of certain specified land lying more than three metres beneath the surface of the land. Ground anchor rights are defined in paragraph (3) and include works to strengthen and stabilise Wolvercot Tunnel and to maintain those works. In order to carry out such maintenance, and to protect any works carried out, the Company is authorised to impose restrictive covenants in relation to the land.

Article 28 (*Rights under or over streets*) permits the Company 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 29 (*Temporary use of land for construction of works*) enables the Company, in connection with the carrying out of the authorised works, to take temporary possession of (i) land listed in Schedule 11 and (ii) land within the scope of paragraph (1)(a)(ii) which is subject to compulsory acquisition under the Order provided the compulsory acquisition process has not begun in relation to it. Paragraph (1)(a)(ii) is an addition to the model clauses. It follows the approach adopted in a number of recent Orders (eg article 27 of the Docklands Light Railway (Stratford International Extension) Order 2006. It allows greater flexibility in the event that following detailed design of the works it is

decided that only temporary occupation rather than permanent acquisition of land is required.

The provisions also depart from the model clauses in allowing (as well as temporary works), permanent mitigation and other works to be constructed and left on the land, without a requirement for these to be removed.

Article 30 (Temporary use of land for maintenance of works) provides for the Company 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 Company 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 31 (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 32 (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 33 (Acquisition of part of certain properties) provides an alternative procedure where the Company 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 34 (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 Company to exclude the application of any or all of the provisions of this article and to enter into agreements making contrary provision. Such provision has precedent, in particular, in article 40 of the Merseytram (Liverpool City Centre to Kirkby) Order 2005 (S.I. 2005 No. 120) and is useful for the purposes of flexibility. That precedent has been adapted so that restrictions on powers to extinguish or suspend private rights of way in agreements are only effective if such agreements are made in contemplation of the Order.

Article 35 (Time limit for exercise of powers of acquisition) imposes a time limit of five years from the coming into force of this Order for the exercise of powers of compulsory acquisition of land.

PART 4

MISCELLANEOUS AND GENERAL

Article 36 (Traffic regulation) authorises the Company during the construction of the works to prohibit or restrict the parking or waiting of vehicles in those parts of those streets specified in Schedule 12 to the Order and to revoke 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 (3).

Article 37 (Defence to proceedings in respect of statutory nuisance) provides the Company with a defence to a claim in statutory nuisance brought under section 82(1) of the Environmental Protection Act 1990 (c.43) if it can show that works are being carried out in accordance with a notice served under section 60, or a consent given under section 61 or 65 of the Control of Pollution Act 1974 (c.40), or that the nuisance complained of is a consequence of the operation of the works authorised by the Order and that it cannot reasonable be avoided. Article 46 of the Docklands Light Railway (Stratford International Extension) Order 2006 is a precedent.

Article 38 (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 39 (Power to lop trees overhanging the authorised works) enables the Company to fell or lop trees and shrubs for the purposes of preventing obstruction or interference with the authorised railway and danger to passengers and users. Provision is included for compensation.

Article 40 (Open Space at Bicester) provides for equivalent land to be given as exchange land for the purposes of section 19 of, or Schedule 3 to, the Acquisition of Land Act 1981 (c.67) to the owners of the public open space land at Bicester acquired by or in which rights are acquired by the Company. The particular land which is to be exchanged is specified on the plan entitled "Open Space Plan" attached to the deposited plans. Paragraph (3) of this article provides that the exchange land shall vest in Cherwell District Council subject to the owners declaring in writing that it shall vest in the Council and the Council agreeing to the land being vested in them.

Article 41 (Open Space at Tubbs Lane) provides that when the Company enters onto open space at Tubbs Lane under section 11(1) of the Compulsory Purchase Act 1965 or section 8 of the Compulsory Purchase (Vesting Declarations) Act 1981 the open space land shall be discharged from all rights, trusts and incidents to which it was previously subject.

Article 42 (Power to operate and use railway) authorises the Company to operate and use the railway.

Article 43 (Power to transfer undertaking) enables the Company, with the Secretary of State's consent, to transfer some or all its powers under the Order or to allow some or all of its powers to be exercised by another party for a specified period.

Article 44 (Agreements with Network Rail) enables the Company to enter into agreements with Network Rail with respect to the construction, maintenance, use and operation of any of the authorised works or any part of them. The agreement may provide for any of the powers under the Order to be exercised by Network Rail or by Network Rail and the Company jointly but any such exercise is subject to the same statutory and contractual provisions as would apply if the powers were exercised by the

Company. The provision is based on provisions such as article 26 of the London Underground (East London Line Extension) Order 1997 (S.I. 1997 No. 264).

Article 45 (*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 46 (*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 Company's apparatus.

Article 47 (*Trespass*) makes it a criminal offence for anyone to trespass on any part of the railway or in the Company's land in dangerous proximity to the railway or to railway apparatus.

Article 48 (*Disclosure of confidential information*) makes disclosure of certain confidential information obtained upon entry to certain premises under article 20 or article 21 a criminal offence.

Article 49 (*Statutory undertakers etc.*) introduces Schedule 13 to the Order which contains specific safeguards for statutory undertakers.

Article 50 (*For the protection of specified undertakers*) introduces Schedule 14 which contains detailed protection for gas, electricity, water and sewerage undertakers in relation to the authorised works.

Article 51 (*For protection of the Environment Agency*) introduces Schedule 15 which contains detailed protection for the Environment Agency in relation to the authorised works.

Article 52 (*Protective provisions for Network Rail*) introduces Schedule 16 which contains detailed protection for Network Rail.

Article 53 (*Certification of plans etc.*) requires the Company 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 54 (*Service of notices*) makes provision as to the service of notices or other documents for the purposes of the Order.

Article 55 (*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 56 (*Arbitration*) makes provision for differences arising under any provision of this Order to be determined by arbitration.

**DEPARTMENT FOR TRANSPORT
2010**

Rule 10(2)(b)

Transport and Works Act 1992

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Objections Procedure) (England and
Wales) Rules 2006**

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Explanatory Memorandum

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