
SCOTTISH STATUTORY INSTRUMENTS

2010 No. 188

The Network Rail (Waverley Steps) Order 2010

PART 2

WORKS PROVISIONS

Principal Powers

Power to construct, operate and maintain works

3.—(1) Network Rail may construct, operate and maintain the scheduled works.

(2) Subject to article 4, the scheduled works may only be constructed in the lines or situations shown on sheet no. 1 of the Order plans and in accordance with the levels shown on the Order sections.

(3) Subject to paragraph (5), Network Rail may carry out, operate and maintain such ancillary works of the sort broadly described in Schedule 2 as may be necessary or expedient for the purposes of, in connection with or in consequence of the construction or use of the scheduled works.

(4) Network Rail may carry out ancillary works of the sort broadly described in paragraph 7 of Schedule 2 to provide for, or share with, the apparatus or street furniture of any other person, and may permit the use of those works on terms and conditions agreed with that other person.

(5) Paragraph (3) only authorises the carrying out, operation or maintenance of ancillary works of the sort broadly described—

- (a) in paragraphs 2 and 8 of Schedule 2 within the limits of deviation; and
- (b) in paragraphs 1, 3, 9 and 11 of that Schedule within the Order limits.

Permitted deviation

4. In constructing or maintaining any scheduled work Network Rail may—

- (a) deviate laterally from the lines or situations shown on sheet no. 1 of the Order plans within the limits of deviation for that work shown on that sheet; and
- (b) deviate vertically from the levels shown on the Order sections—
 - (i) in the case of Work No. 1, upwards by a maximum of 0.5 metres;
 - (ii) in the case of Work No. 3, upwards by a maximum of 1.5 metres; and
 - (iii) in the case of so much of Work No. 1 as is within plots nos. 1 and 11, and Work No. 3, to any extent downwards.

Power to execute road works

5.—(1) For the purpose of exercising the powers conferred by this Order to construct and maintain any scheduled work having a junction with a road(1), Network Rail may enter upon any road and execute any works required for or incidental to the exercise of those powers.

(2) In exercise of the powers of paragraph (1) Network Rail may break up or open the road, or any sewer, drain or tunnel under it, may tunnel or bore under or open the road and may remove and use the soil or other materials in the road.

Access to works

6.—(1) Network Rail may, for or in connection with the authorised works, form and lay out means of access, or improve existing means of access, to or from any public road—

- (a) at the points shown on sheet no. 1 of the Order plans; and
- (b) in such other location or locations within the Order limits as may be approved by the roads authority.

(2) Approval of the roads authority under paragraph (1)(b) shall not be unreasonably withheld or delayed and any dispute as to whether an approval has been unreasonably withheld or delayed shall, unless the parties otherwise agree, be determined by arbitration.

Agreements with roads authority

7.—(1) Where this Order authorises the execution of road works, Network Rail may enter into agreements with the roads authority concerning the construction (or contribution towards the expense of construction) of those road works and any related matters.

(2) Network Rail may, by agreement with the roads authority, delegate to that authority the power of executing the road works.

Permanent stopping up of road

8.—(1) Subject to the provisions of this article, Network Rail may, in connection with the construction of Work No. 1, stop up Waverley Steps.

(2) Not less than seven days before stopping up Waverley Steps under this article Network Rail shall place notices of the stopping up in conspicuous positions at either end of Waverley Steps.

(3) Network Rail shall take all reasonable steps to secure that the notices displayed in accordance with paragraph (2) shall continue to be displayed in a legible form throughout the seven days preceding the stopping up under this article.

(4) On the stopping up of Waverley Steps under this article all rights of passage over Waverley Steps (other than any such right created under this Order) shall be extinguished.

(5) Where a private right of passage is exercisable over land, in addition to Waverley Steps, which is within Network Rail's operational land outside the Order limits, the right extinguished by paragraph (4) shall be the whole of that right as affecting all the operational land to which it relates.

(6) Any person who suffers loss by the extinguishment of any private right of passage under this article shall be entitled to compensation.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, shall be determined under the 1963 Act.

(1) For the relevant definition of "road" see the Transport and Works (Scotland) Act 2007 (asp 8), section 23(1) and the New Roads and Street Works Act 1991 (c.22), section 107.

Construction, maintenance and vesting of Work No. 2

9.—(1) Work No. 2 shall, unless otherwise agreed between Network Rail and the roads authority, be completed to the reasonable satisfaction of the roads authority.

(2) Following completion of Work No. 2, that work shall, unless otherwise agreed—

- (a) between Network Rail and the roads authority under this article; or
- (b) by agreement under article 38,

be maintained by and at the expense of Network Rail for a period of 12 months from its completion.

(3) On the date provided by paragraph (7), Work No. 2 shall by virtue of this article vest in the roads authority as a public road.

(4) Network Rail shall give the roads authority notice in writing with a certificate that Work No. 2 is complete.

(5) The roads authority may, within 21 days after such service, give Network Rail a counter-notice in writing that the notice is disputed on the ground that Work No. 2 is not complete.

(6) Any dispute as to—

- (a) the completion of Work No. 2 (other than a dispute as to the date referred to in paragraph (7)(c)); or
- (b) the appointment of a consultant for the purpose of paragraph (8),

shall be determined by arbitration, and the determination of the arbiter (or other person to whom the dispute is referred) shall be final and binding.

(7) Work No. 2 shall vest—

- (a) 28 days after the service of notice under paragraph (4);
- (b) on the date of a determination under paragraph (6) that Work No. 2 is complete; or
- (c) on the date on which Network Rail complies with any conditions for completion that are specified in the determination,

whichever is the latest.

(8) A certificate issued by or on behalf of Network Rail as to the date on which Network Rail complied with any conditions of the sort referred to in paragraph (7)(c) together, if so requested by the roads authority, with a report from a consultant to be agreed between Network Rail and the roads authority confirming such compliance, shall for the purposes of this article be conclusive evidence of such compliance.

(9) Nothing in this article shall prejudice the operation of section 146 of the 1991 Act (which enables the local roads authority to declare that a road shall become a public road); and Network Rail shall not by reason of any duty under this article to maintain a road be taken to be the roads authority in relation to that road for the purposes of Part 4 of that Act.