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STATUTORY INSTRUMENTS

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**2018 No. 446**

**The Network Rail (Hope Valley Capacity) Order 2018**

**PART 2**

**WORKS PROVISIONS**

*Principal powers*

**Power to construct and maintain works**

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

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

(3) Network Rail may on the land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) carry out and maintain any works specified in relation to that land in column (3) of that Schedule with all necessary works and conveniences in connection with those works.

(4) Network Rail may, on the land specified in article 21(1) (cases where powers of acquisition limited to ground anchor rights) carry out and maintain any works specified in relation to that land in article 21(5)(a) with all necessary works and conveniences in connection with those works.

(5) Subject to paragraph (7), Network Rail may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) construction of electrical equipment, signalling and permanent way works;
- (b) buildings, yards, machinery, plant, apparatus, track drainage works, fencing, platform shelters, and other works and conveniences;
- (c) approaches, ramps, lifts, stairs, passages, means of access, gates, shafts and stagings including temporary means of access from a highway to adjoining land;
- (d) embankments, cuttings, aprons, abutments, retaining walls, wing walls and culverts;
- (e) works to alter or remove any structure erected upon any highway or adjoining land;
- (f) works to alter the position of apparatus, including mains, sewers, drains, cables and street furniture;
- (g) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (h) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (i) works for the benefit or protection of premises affected by the scheduled works.

(6) Subject to paragraph (7), 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 works, other than works that would interfere with a navigable watercourse.

(7) Paragraphs (5) and (6) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on—

- (a) land specified in columns (1) and (2) of Schedule 2 (acquisition of certain lands for ancillary works) for the purpose specified in relation to that land in column (3) of that Schedule; and
- (b) land specified in columns (1) and (2) of Schedule 8 (land of which temporary possession may be taken) for the purposes specified in relation to that land in column (3) of that Schedule, relating to the scheduled works specified in column (4) of that Schedule.

### **Power to deviate**

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

- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work; and
- (b) deviate vertically from the levels shown on the deposited sections—
  - (i) to any extent not exceeding 3 metres upwards; or
  - (ii) to any extent downwards as may be found to be necessary or convenient.

### *Streets*

### **Power to execute street works**

8.—(1) Network Rail may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 (streets subject to street works) as are within the Order limits and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it, or tunnel or bore under the street;
- (b) place apparatus in the street;
- (c) maintain apparatus in the street or change its position; and
- (d) execute any works required for or incidental to any works referred to in sub-paragraphs (a), (b) and (c).

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

### **Temporary stopping up 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—

- (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 as a temporary working site.

(3) Network Rail must provide reasonable access for pedestrians going to or from premises abutting a street affected by the exercise of the powers conferred by this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), Network Rail may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, in column (3) of that Schedule.

(5) Network Rail must not exercise the powers conferred by this article—

- (a) in relation to any street specified as mentioned in paragraph (4) without first consulting the street authority; and
- (b) in relation to any other street without the consent of the street authority which may attach reasonable conditions to any consent, but such consent must not be unreasonably withheld.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If within 28 days of receiving an application for consent under paragraph (5)(b) a street authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

### **Access to works**

**10.**—(1) Network Rail may, for the purposes of the authorised works, with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out means of access or improve existing means of access, at such locations within the Order limits as Network Rail reasonably requires for the purposes of the authorised works.

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

### **Construction and maintenance of altered streets**

**11.**—(1) Where a street is altered under this Order, the altered part of the street must, when completed to the reasonable satisfaction of the street authority unless otherwise agreed with the street authority, be maintained by and at the expense of Network Rail for a period of 12 months from its completion and at the expiry of that period by and at the expense of the street authority.

(2) Paragraph (1) does not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of Network Rail.

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

(4) For the purposes of a defence under paragraph (3), the court must in particular have regard to the following matters—

- (a) the character of the street and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a street of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the street;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the street to which the action relates was likely to cause danger to users of the street; and

- (e) where Network Rail could not reasonably have been expected to repair that part of the street 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 street 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 street and that the competent person had carried out those instructions.

### **Agreements with street authorities**

- 12.**—(1) A street authority and Network Rail may enter into agreements with respect to—
- (a) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
  - (b) the execution in the street of any of the works referred to in article 8(1) (power to execute street works).
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

### **Replacement and closure of footpath level crossing**

**13.**—(1) Subject to paragraph (3), the footpath level crossing specified in columns (1) and (2) of Schedule 5 (replacement and closure of footpath level crossing) is stopped up and discontinued.

(2) Subject to paragraph (3), upon the stopping up and discontinuance of the footpath level crossing referred to in paragraph (1), any right of way over the part of the footpath specified in relation to it in column (3) of Schedule 5 is extinguished.

(3) Paragraphs (1) and (2) are not to take effect with respect to the footpath specified in columns (1), (2) and (3) of Schedule 5 until the replacement footpath specified in relation to it in column (4) of that Schedule has been provided to the reasonable satisfaction of the street authority and is open for use.

(4) On completion of the construction of the replacement footpath specified in column (4) of Schedule 5 Network Rail must submit a written request to the street authority for written approval for the replacement footpath to be open for use which must not be unreasonably withheld and which must be given within 28 days of the street authority receiving a request for approval under this paragraph. If the street authority fails to notify Network Rail of a decision, in writing, by the expiry of 28 days from receiving a request for approval, the street authority is deemed to have granted approval.

(5) If, in response to a request under paragraph (4), the street authority notifies Network Rail that it does not give its approval for the replacement footpath to be open for use, the matter is to be determined in accordance with article 43 (arbitration).

(6) In providing the replacement footpath specified in column (4) of Schedule 5, Network Rail may within the Order limits erect barriers and signs and carry out or provide any ancillary works or conveniences, subject to the agreement of the highway authority, such agreement not to be unreasonably withheld.

(7) Any person who suffers loss by the extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(8) The replacement footpath specified in column (4) of Schedule 5 provided under this article is to be a public footpath and, subject to paragraphs (9) to (12), in relation to that replacement footpath,

section 28(1) (compensation for loss caused by public path creation order) of the 1980 Act applies as if the right of way over the replacement footpath had been created by a public path creation order.

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

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

(11) For subsection (2), substitute—

“(2) A claim for compensation under this section is to be made to Network Rail Infrastructure Limited in writing within 6 months from the date the replacement footpath specified in column (4) of Schedule 5 to the Network Rail (Hope Valley Capacity) Order 2018(2) is open for use and is to be served on Network Rail Infrastructure Limited by delivering it at, or by sending it by pre-paid post to, the registered office of Network Rail Infrastructure Limited.”

(12) Subsection (3) is omitted.

(13) For the purposes of paragraphs (8) to (12), section 307 (disputes as to compensation which are to be determined by Upper Tribunal and related provisions) of the 1980 Act, in its application to section 28 of the 1980 Act 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.

### *Supplemental powers*

#### **Discharge of water**

**14.**—(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the exercise of the powers in paragraph (1) to connect to or use a public sewer or drain is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991(3).

(3) Network Rail must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) Network Rail must not make any opening into any public sewer or drain except—

(a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) Network Rail must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) Network Rail must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

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(1) As amended by [S.I. 2006/1177](#).

(2) [S.I. 2018/446](#).

(3) [1991 c. 56](#). Section 106 was amended by sections 35(1), 35(8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act [1992 \(c. 43\)](#), sections 36(2) and 99 of the Water Act [2003 \(c. 37\)](#) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act [2010 \(c. 29\)](#).

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(4).

(8) If a person who receives an application for consent or approval fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case maybe.

(9) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, Environment Agency, a National Park Authority, an internal drainage board or a local authority; and
- (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991(5) have the same meaning as in that Act.

### **Protective works to buildings**

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

(2) Protective works may be carried out—

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

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

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

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

(5) Before exercising—

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

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

(6) Where a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning

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(4) [S.I. 2016/1154](#).

(5) [1991 c. 57](#).

with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 43 (arbitration).

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

(8) Where—

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

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

(9) Without affecting article 42 (no double recovery) nothing in this article relieves Network Rail from any liability to pay compensation under section 10(2)(6) of the 1965 Act.

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

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

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

### **Power to survey and investigate land**

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

- (a) survey or investigate any land shown within the Order limits;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions as Network Rail thinks fit on the land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (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) Any person entering land under this article on behalf of Network Rail—

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(6) 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.

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so; and
  - (b) 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.
- (4) 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.
- (5) 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.
- (6) Nothing in this article overrides the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(7).
- (7) If either a highway authority or street authority fails to notify Network Rail of its decision within 14 days of receiving an application for consent—
- (a) under paragraph 4(a) in the case of a highway authority; or
  - (b) under paragraph 4(b) in the case of a street authority,
- that authority is deemed to have granted consent.