
STATUTORY INSTRUMENTS

2004 No. 389

The Network Rail (West Coast Main Line) Order 2004

PART II

WORKS PROVISIONS

Supplemental powers

Temporary closure of part of Coventry Canal

18.—(1) In this article “the waterway” means so much of the Coventry Canal and the towing path, numbered 191 to 195 on the deposited plans, at Huddlesford in the district of Lichfield in the county of Staffordshire as lies within the Order limits.

(2) Network Rail, during and for the purpose of the construction of Work Nos. 1, 2 and 12 and the bridge referred to in article 28(2), may temporarily close and de-water any part of the waterway and divert barges and other boats from any part of the waterway.

(3) During the period of the closure referred to in paragraph (2), all rights of navigation along, and obligations of the British Waterways Board to maintain for navigation, the waterway or part thereof so closed shall be suspended and unenforceable against the British Waterways Board.

(4) Any person who suffers loss by the suspension of any right under this article shall be entitled to be paid by Network Rail compensation, to be determined in the case of dispute by the tribunal.

Discharge of water

19.—(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, sewer or drain.

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

(3) Network Rail shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) Network Rail shall 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.

(5) Network Rail shall 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 or oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991⁽¹⁾.

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority or a joint planning board;
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective works to buildings

20.—(1) Subject to the following provisions of this article, Network Rail may at its own expense and from time to time carry out such protective works to any building within the Order limits and lying within 35 metres of any of the authorised works 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, 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 enter and survey any building falling within paragraph (1) and any land belonging to it.

(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 belonging to it; and
- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, 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;
- (c) a right under paragraph (4)(a) to enter a building or land; or
- (d) a right under paragraph (4)(b) to enter land,

Network Rail shall, 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 sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where 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 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 44.

(1) 1991 c. 57.

(7) Network Rail shall compensate the owners and occupiers of any building or land in relation to which the powers of 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 within 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 works,

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

(9) Nothing in this article shall relieve Network Rail from any liability to pay compensation under section 10(2) of the 1965 Act.

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

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection;
- (b) any reference to a building within a specified distance of a work includes—
 - (i) in the case of a work under the surface of the ground, a reference to any building within the specified distance of the point on the surface below which the work is situated; and
 - (ii) where a work has not commenced, a reference to a building within the specified distance of the proposed site of the work; and
- (c) “protective works”, in relation to a building, means—
 - (i) 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; and
 - (ii) 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.

Power to survey and investigate land

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

- (a) survey or investigate any land within the Order limits;
- (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as it thinks fit on any such land to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on any such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); 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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- (a) shall, if so required, before or after entering the land produce written evidence of his authority to do so; and
 - (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.
- (5) Network Rail shall make compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the 1961 Act.
- (6) Nothing in this article shall obviate any need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(2).