
STATUTORY INSTRUMENTS

2011 No. 1072

The Network Rail (Hitchin (Cambridge Junction)) Order 2011

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

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

(2) Subject to article 6 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the works and land plans and in accordance with the levels shown on the sections.

(3) Subject to paragraph (6), 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) railway electrification and signalling works;
- (b) works to erect and construct such offices and other buildings, yards, machinery, plant, apparatus, and other works, and conveniences as Network Rail thinks fit;
- (c) works to construct, provide and maintain all such embankments, viaducts, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or convenient;
- (d) works required for the strengthening, improvement, maintenance or reconstruction of any street;
- (e) works required for the strengthening, altering or demolition of any building or structure;
- (f) works to alter the position of any street furniture or apparatus, including mains, sewers, drains, pipes, cables and lights;
- (g) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (h) landscaping, ecological and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works; and
- (i) replacement facilities and works for the benefit or protection of land or premises affected by the other authorised works.

(4) Subject to paragraph (6), 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 which would interfere with a navigable watercourse.

(5) Network Rail may remove any works constructed by it pursuant to this Order which have been constructed as temporary works or which it no longer requires.

(6) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works within the Order limits.

(7) The scheduled works may be constructed and maintained under the powers conferred by this article regardless of anything done pursuant to Part 1 of, or Schedule 2 to, the Commons Act 2006⁽¹⁾.

Power to deviate

6.—(1) In constructing or maintaining any of the scheduled works, Network Rail may—

- (a) deviate laterally from the lines or situations shown on the works and land plans within the limits of deviation shown on those plans; and
- (b) deviate vertically from the levels shown on the 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.

(2) Without limiting the scope of paragraph (1), in constructing or maintaining the scheduled works Network Rail may, to the extent it thinks fit—

- (a) deviate from their points of commencement and termination shown on the works and land plans; and
- (b) in relation to any intended bridge, viaduct, gantry or other structure above ground level, deviate from the design shown on the deposited plans, including by varying the number of any supporting columns or other structures, the distances between them and the height or clearance above the level of the ground.

Streets

Power to alter layout, etc., of streets

7.—(1) Network Rail may for the purposes of the authorised works alter the layout of or carry out any ancillary works in the street specified in column (1) of Schedule 2 (street subject to alteration of layout) in the manner specified in relation to that street in column (2).

(2) Without prejudice to the specific powers conferred by paragraph (1) but subject to paragraph (3), Network Rail may, for the purposes of constructing and maintaining any scheduled work, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limiting the scope of this paragraph, Network Rail may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footway, cycle track or verge; and
- (c) reduce the width of the carriageway of the street.

(3) The powers conferred by paragraph (2) shall not be exercised without the consent of the street authority; but such consent shall not be unreasonably withheld.

(4) If a street authority which receives an application for consent under paragraph (3) fails to notify Network Rail of its decision before the end of the period of 28 days beginning with the date on which the application was made, it shall be deemed to have granted consent.

(1) 2006 c. 26.

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 is 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.

Construction of new and stopping up of existing streets

9.—(1) Network Rail may in connection with the authorised works construct the new streets specified in column (3) of Schedule 4 (streets to be stopped up and provision of substitutes) by reference to the letters and numbers shown on the rights of way plan.

(2) Network Rail may, in connection with the authorised works, stop up each of the streets specified in column (1) of Schedule 4 to the extent specified in column (2) of that Schedule.

(3) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up shall be extinguished; and
- (b) Network Rail may appropriate and use for the purposes of its railway undertaking so much of the site of the street as is bounded on both sides by land owned by Network Rail.

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

(5) This article is subject to paragraph 2 of Schedule 11 (statutory undertakers, etc.).

Temporary stopping up and diversion of streets

10.—(1) Network Rail may, during and for the purposes of the execution of the authorised works, temporarily stop up, alter or divert any existing 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 limiting 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 shall 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 limiting the scope of paragraph (1), Network Rail may exercise the powers conferred by this article—

- (a) in relation to the existing streets specified in column (1) of Schedule 4 (streets to be stopped up and provision of substitutes) to the extent specified, by reference to the letters and numbers shown on the rights of way plan; and
- (b) in relation to the streets specified in Schedule 5 (streets to be temporarily stopped up) to the extent specified in column (2) of that Schedule and by reference to the letters and numbers shown on the rights of way plan, where appropriate.

- (5) Network Rail shall 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 shall not be unreasonably withheld.
- (6) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.
- (7) If a street authority which receives an application for consent under paragraph (5)(b) fails to notify Network Rail of its decision before the end of the period of 28 days beginning with the date on which the application was made, it shall be deemed to have granted consent.

Access to works

- 11.**—(1) Network Rail may, for the purposes of the construction or maintenance of the authorised works—
- (a) form and lay out means of access, or improve existing means of access, to the streets specified in columns (1) and (2) of Schedule 6 (access to works) at or about the points marked ‘A’ on the works and land plans; and
 - (b) with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out such other 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 which receives an application for approval under paragraph (1)(b) fails to notify Network Rail of its decision before the end of the period of 28 days beginning with the date on which the application was made, it shall be deemed to have granted approval.

Construction and maintenance of new or altered streets

- 12.**—(1) Any street to be constructed under this Order (other than Works Nos. 6, 9 and 11) shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, 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 highway authority.
- (2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, 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.
- (3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge or tunnel carrying a street over or under any railway of Network Rail and except as provided in those paragraphs Network Rail shall not be liable to maintain the surface of any highway under or over which the scheduled works shall be constructed, or the immediate approaches to any such highway.
- (4) 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 shall be 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.
- (5) For the purposes of a defence under paragraph (4), the court shall 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;
- (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

- 13.**—(1) A street authority and Network Rail may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under any authorised railway) under the powers conferred by this Order;
 - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
 - (c) the maintenance of the structure of any bridge or tunnel carrying a street over or under any authorised railway;
 - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
 - (e) 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 limiting the scope of paragraph (1)—
- (a) provide 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.

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, operation 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 conferred by paragraph (1) to connect to or use a public sewer or drain shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(2).

(3) Network Rail shall 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 shall not be unreasonably withheld.

(4) Network Rail shall 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 shall not be unreasonably withheld; and

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

(5) 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.

(6) 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, oil or matter in suspension.

(7) Nothing in this article obviates the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2010(3).

(8) 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 or a local authority; and

(b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Power to survey and investigate land

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

(a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;

(b) without limiting 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 limiting the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;

(d) take steps to protect or remove any flora or fauna on the land where the flora or fauna may be affected by the carrying out of the authorised works;

(e) 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 (d); and

(f) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (e).

(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—

(a) shall, 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 shall 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 shall not be unreasonably withheld.

(5) Network Rail shall 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 obviates the requirement for scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(4).

(7) If either a highway authority which receives an application for consent under paragraph (4) (a) or a street authority which receives an application for consent under paragraph (4)(b) fails to notify Network Rail of its decision before the end of the period of 14 days beginning with the date on which the application was made, it shall be deemed to have granted consent.

Obstruction of construction of authorised works

16. Any person who, without reasonable excuse—

- (a) obstructs another person acting under the authority of Network Rail in setting out the lines of the scheduled works, or in constructing any of the authorised works; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of Network Rail,

shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.