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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**

*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

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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specified in column (4) of Schedule 5 to the Network Rail (Hope Valley Capacity) Order 2018<sup>(2)</sup> 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.

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(2) S.I. 2018/446.