
STATUTORY INSTRUMENTS

2018 No. 571

**The Network Rail (Kings Mill No. 1 Level Crossing)
(Land Acquisition and Closure) Order 2018**

**PART 2
CROSSING**

Creation and maintenance of new public right of way

4.—(1) The new public right of way is to be completed to the reasonable satisfaction of the highway authority and is to be maintained by and at the expense of Network Rail for a period of 12 months from its completion, and after the expiry of that period by and at the expense of the highway authority.

(2) The new public right of way is to have the status of a bridleway and, subject to paragraphs (3) to (6), in relation to the new public right of way, section 28(1) (compensation for loss caused by public path creation order) of the 1980 Act applies as if that new public right of way had been created by a public path creation order.

(3) In its application by virtue of paragraph (2), section 28 of the 1980 Act has effect with the modifications mentioned in paragraphs (4) to (6).

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

(5) 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 new public right of way (as provided for in article 4 (creation and maintenance of new public right of way) of the Network Rail (Kings Mill No. 1 Level Crossing) (Land Acquisition and Closure) 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.”

(6) Subsection (3) is omitted.

(7) For the purposes of paragraphs (2) to (6), 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.

(8) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain the new public right of way, 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

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

(2) [S.I. 2018/571](#).

care as in all the circumstances was reasonably required to secure that the part of the new public right of way to which the action relates was not dangerous to traffic.

(9) For the purposes of a defence under paragraph (8), the court must in particular have regard to the following matters—

- (a) the character of the new public right of way and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a public right of way of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the new public right of way;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new public right of way to which the action relates was likely to cause danger to users of the new public right of way; and
- (e) where Network Rail could not reasonably have been expected to repair that part of the new public right of way 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 new public right of way 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 new public right of way and that the competent person had carried out those instructions.

(10) The new public right of way is to be treated as completed to the satisfaction of the highway authority if the highway authority fails to reply to a request for certification that it is satisfied with the work within 28 days of receiving the request.

(11) This article does not apply in relation to the structure of any bridge carrying the new public right of way over any railway of Network Rail.