

---

STATUTORY INSTRUMENTS

---

**2011 No. 1072**

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

**PART 2**

**WORKS PROVISIONS**

*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.

**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.