
STATUTORY INSTRUMENTS

2018 No. 446

The Network Rail (Hope Valley Capacity) Order 2018

PART 2

WORKS PROVISIONS

Streets

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 specified in column (4) of Schedule 5 to the Network Rail (Hope Valley Capacity) 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.”

(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.