
STATUTORY INSTRUMENTS

2018 No. 446

The Network Rail (Hope Valley Capacity) Order 2018

PART 4

MISCELLANEOUS AND GENERAL

Defence to proceedings in respect of statutory nuisance

30.—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990⁽¹⁾ in relation to a nuisance falling within paragraph (g) of section 79(1)⁽²⁾ of that Act (noise emitted from premises so as to be prejudicial to health or a nuisance), no order is to be made, and no fine may be imposed, under section 82(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61⁽³⁾ (prior consent for work on construction sites) or section 65⁽⁴⁾ (noise exceeding registered level), of the Control of Pollution Act 1974⁽⁵⁾; or
- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) The following provisions of the Control of Pollution Act 1974—

- (a) section 61(9); and
- (b) section 65(8),

do not apply where the consent relates to the use of premises by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) The provisions of this article do not affect the application to the authorised works of section 122 (statutory authority as a defence to actions in nuisance, etc.) of the Railways Act 1993⁽⁶⁾ or any rule of common law having similar effect.

(1) 1990 c. 43. Section 82 was amended by section 5(2) of the Noise and Statutory Nuisance Act 1993 (c. 40) and paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

(2) Section 79(1) was amended by section 2(2) of the Noise and Statutory Nuisance Act 1993, section 120 of, and paragraph 2(a) of Schedule 17 and paragraph 89(2) of Schedule 22 to, the Environment Act 1995, sections 101(2) and 102(2) of the Clean Neighbourhoods and Environment Act 2005 (c. 16) and sections 109(2), 110(2), 111(2) and 112(2)(a) of the Public Health etc. (Scotland) Act 2008 (asp. 5).

(3) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(4) Section 65 was amended by paragraph 15(4) of Schedule 15 to the Environmental Protection Act 1990 and Schedule 24 to the Environment Act 1995.

(5) 1974 c. 40.

(6) 1993 c. 43. As amended by the Transport Act 2000 (c. 38) and the Railways Act 2005 (c. 14).

Planning permission

31. Planning permission which is deemed by a direction under section 90(2A)(7) (development with government authorisation) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land of the purposes of that Act) of that Act.

Power to lop trees overhanging the authorised works

32.—(1) Network Rail may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers conferred by paragraph (1), Network Rail must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined under Part 1 of the 1961 Act.

Power to operate and use railway

33.—(1) Network Rail may operate and use the railway and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993(8).

Obstruction of construction of authorised works

34. Any person who, without reasonable excuse—

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

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

Temporary traffic regulation

35.—(1) Subject to the provisions of this article Network Rail, may for the purposes of and during the construction of the authorised works—

- (a) permit, prohibit, suspend or restrict the stopping, waiting, parking, loading or unloading of vehicles in the manner specified in Part 1 of Schedule 9 (temporary traffic regulation) on those streets specified in column (3) and between the points and to the extent specified in columns (4) and (5) of that Part of that Schedule; and
- (b) make provision as to the restriction on the speed of vehicular traffic in the manner specified in Part 2 of Schedule 9 on the streets specified in column (3) between the points and to the extent specified in column (4) of that Part of that Schedule; and

(7) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act (c. 42).

(8) 1993 c. 43 as amended by the Transport Act 2000 (c.38) and the Railways Act 2005 (c. 14).

(c) so far as may be necessary or expedient for the purposes of or in connection with construction of the authorised works—

- (i) revoke, amend or suspend in whole or in part any order made, or having effect as if made, under the 1984 Act;
- (ii) permit, prohibit or restrict the stopping, waiting, loading or unloading of vehicles on any road;
- (iii) suspend or authorise the use as a parking place of any road;
- (iv) make provision as to the direction or priority of vehicular traffic on any road; and
- (v) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by Network Rail.

(2) The powers conferred by paragraph (1)(c) may only be exercised after Network Rail has consulted the chief officer of police and such other persons as it considers necessary and appropriate, after Network Rail has taken into consideration any representations made to it by any such person and after Network Rail has obtained the consent of the traffic authority in whose area the road concerned is situated (which must not be unreasonably withheld but may be given subject to reasonable conditions).

(3) Network Rail must not exercise the powers conferred by this article in relation to any road unless it has—

- (a) given not less than 4 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority in whose area the road is situated; and
- (b) advertised its intention in such manner as the traffic authority may within 7 days of its receipt of notice of Network Rail's intention specify in writing.

(4) Any prohibition, suspension or other provision made by Network Rail under paragraph (1) has effect as if duly made by, as the case may be—

- (a) the traffic authority in whose area the road is situated, as a traffic regulation order under the 1984 Act; or
- (b) the local authority in whose area the road is situated, as an order under section 32 of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions (in addition to those mentioned in Schedule 9) to which the prohibition, restriction or other provision is subject.

(5) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by Network Rail from time to time by subsequent exercise of the powers of paragraph (1).

(6) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

(7) The powers conferred on Network Rail by this article with respect to any road have effect subject to any agreement entered into by Network Rail with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

Traffic signs

36.—(1) Network Rail may, for the purposes of the construction of the authorised works, place or maintain traffic signs on any street within the Order limits or which gives access to such a street, or on any street in connection with any instrument made under article 35 (temporary traffic regulation) or any other street as reasonably required for conveying information to traffic.

(2) Network Rail—

- (a) must consult with the traffic authority as to the placing of traffic signs; and
- (b) may subject to any directions given under section 65 (powers and duties of highway authorities as to placing of traffic signs) of the 1984 Act, enter into arrangements with the consent of the traffic authority for the traffic signs to be placed and maintained by the traffic authority, such consent not to be unreasonably withheld.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs includes a power to give directions to Network Rail as to traffic signs under this article; and the powers conferred by paragraph (1) are exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on any street referred to in paragraph (1) must consult with Network Rail as to the placing of any traffic signs which may affect the authorised works.

(5) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

Disclosure of confidential information

37. A person who—

- (a) enters a factory, workshop or workplace under the provisions of article 15 (protective works to buildings) or article 16 (power to survey and investigate land); and
- (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

Statutory undertakers etc.

38. The provisions of Schedule 10 (provisions relating to statutory undertakers etc.) have effect.

Protection of interests

39. Schedule 11 (protective provisions) has effect.

Certification of plans etc.

40. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited plans, the deposited sections and the traffic regulation plans to the Secretary of State for certification that they are, respectively, true copies of the book of reference, the deposited plans, the deposited sections and the traffic regulation plans referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

Service of notices

41.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or

- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.
- (2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.
- (3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(9) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—
- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
 - (b) in any other case, the last known address of that person at the time of service.
- (4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—
- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
 - (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.
- (5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.
- (6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.
- (7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).
- (8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—
- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
 - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not be taken to exclude the employment of any method of service not expressly provided for by it.

No double recovery

42. Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

Arbitration

43. Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement,

(9) 1978 c. 30.

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to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.