
STATUTORY INSTRUMENTS

2018 No. 937

The Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018

PART 2

WORKS PROVISIONS

Streets

Creation and maintenance of new footpaths or bridleways

6.—(1) The new footpaths and bridleways specified in column (4) of Part 1 of Schedule 3 (level crossings and highways to be stopped up) are to be completed to the reasonable satisfaction of the highway authority and are to be maintained by and at the expense of Network Rail for a period of 12 months from their completion and from the expiry of that period by and at the expense of the highway authority.

(2) Paragraph (1) does not apply in relation to the structure of the bridge forming Work No. 1.

(3) On completion of each new footpath or bridleway in accordance with paragraph (1), a public right of way over it is created by virtue of this paragraph which has the legal status specified in column (5) of Part 1 of Schedule 3.

(4) Section 28 (compensation for loss caused by public path creation order)(1) of the 1980 Act is to apply to each new footpath or bridleway specified in column (4) of Part 1 of Schedule 3 as if the footpath or bridleway had been created by an order under section 26(2) (compulsory powers for the creation of footpaths, bridleways and restricted byways) of that Act.

(5) In its application by virtue of paragraph (4), section 28 of the 1980 Act is to have effect with the modifications mentioned in paragraphs (6) to (8).

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

(7) 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 completion of the public right of way concerned in accordance with article 6(1) of the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018(3) 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.”.

(8) Omit subsection (3).

(1) Section 28 has been amended by [S.I. 2006/1177](#).

(2) Section 26 has been amended by section 1(6) of, and paragraphs 1, 18(1) to (4) of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7) and by [S.I. 2006/1177](#).

(3) [S.I. 2018/937](#).

(9) For the purposes of paragraphs (4) to (8), section 307 (disputes as to compensation which are to be determined by Lands Tribunal and related provisions) of the 1980 Act, in its application to section 28 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.

(10) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain the new footpath or bridleway, 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 new footpath or bridleway to which the action relates was not dangerous to traffic.

(11) For the purposes of a defence under paragraph (10), the court must in particular have regard to the following matters—

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

(12) A new footpath or bridleway is to be treated as completed to the satisfaction of the highway authority for the purpose of paragraph (1) if it fails to reply to a request for certification that the footpath or bridleway has been so completed within 28 days of receiving the request.