
STATUTORY INSTRUMENTS

2022 No. 651

**The Network Rail (Essex and Others
Level Crossing Reduction) Order 2022**

PART 2

CROSSINGS

Power to construct and maintain works

5.—(1) Network Rail may construct and maintain the scheduled works.

(2) Subject to article 6 (power to deviate) the scheduled works may only be constructed in the lines or situations shown on the deposited plans and in accordance with the levels shown on the deposited sections.

(3) Subject to paragraph (5), Network Rail may construct and maintain within the Order limits such works as are required—

- (a) to provide the public rights of way to the extent specified in column (4) of Part 1 of Schedule 2 (closure of level crossings);
- (b) in connection with the extinguishment of the rights of way specified in column (3) in Parts 1 and 2 of Schedule 2;
- (c) to provide the private rights of access to the extent specified in column (1) of Schedule 3 (land in which private rights of access may be acquired); and
- (d) in connection with the redesignation of highways specified in columns (3) and (4) and to the extent specified in column (2) of Schedule 4 (redesignation of highways);
including—
 - (e) works to lay out footpaths, footways, bridleways and cycle tracks, including any surfacing, fencing, stiles, gates, signs, ramps, steps, other means of access, and mounting blocks;
 - (f) works or other operations, for the purposes of drainage and flood prevention, including embankments, including ground reprofiling and culverts;
 - (g) works or other operations to level or stabilise the condition of any land, including ground reprofiling and embankments;
 - (h) works to install or alter the position of apparatus, including mains, sewers, drains and cables;
 - (i) works in the highway including provision of benches and handrails, provision of alteration to or removal of lighting, bollards and other traffic restraint systems, signage and signalling and installation of road side equipment,

or other conveniences as may be necessary or expedient for the purposes of the provision of or extinguishment of the rights of way or redesignation of highways.

(4) Subject to paragraph (5), Network Rail may carry out such other works (of whatever nature) as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works and authorised works described in paragraph (3).

(5) Paragraphs (3) and (4) only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on—

- (a) land specified in columns (1) and (2) of Schedule 5 (land in which only new rights etc., may be acquired) for the purposes specified in column (3) of that Schedule; or
 - (b) land specified in columns (1) and (2) of Schedule 6 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule.
- (6) Network Rail may, within the Order limits—
- (a) carry out and maintain landscaping and other works to mitigate any adverse effects of the construction, maintenance and operation of the authorised works (other than works authorised by this paragraph); and
 - (b) carry out and maintain works for the benefit or protection of land affected by the authorised works (other than works authorised by this paragraph).

Power to deviate

6. In constructing or maintaining any of the scheduled works, Network Rail may—
- (a) deviate laterally from the lines or situations shown on the deposited plans to the extent of the limits of deviation for that work; and
 - (b) deviate vertically from the levels shown on the deposited sections—
 - (i) to any extent upwards not exceeding 3 metres; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

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 works in, the street specified in columns (1) and (2) of Schedule 7 (streets subject to alteration of layout) in the manner specified in relation to that street in column (3) of that Schedule.

(2) Without limitation on the scope of the specific powers conferred by paragraph (1) but subject to paragraph (3), Network Rail may, for the purposes of constructing and maintaining any authorised 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 limitation on the scope of that power, 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, create or increase the width of any such kerb, footpath, footway, bridleway, cycle track or verge;
- (c) reduce the width of the carriageway of the street; and
- (d) provide pedestrian refuges.

(3) Network Rail must restore to the reasonable satisfaction of the street authority any street which has been temporarily altered under this article.

(4) The powers conferred by paragraph (2) are not to be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) If within 28 days of receiving an application for consent under paragraph (4) a street authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

Power to execute street works

8.—(1) Network Rail may, for the purposes of the authorised works, enter on any of the streets specified in Schedule 8 (streets subject to street works) as are within the Order limits to the extent necessary and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (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.

Temporary stopping up of streets

9.—(1) Network Rail, during and for the purposes of the execution of the authorised works, may temporarily stop up, alter or divert any 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 limitation on the scope of paragraph (1), Network Rail may use any street stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(3) Network Rail must provide reasonable access for pedestrians going to or from premises abutting on a street affected by the temporary stopping up, alteration or diversion of a street under this article if there would otherwise be no such access.

(4) Without limitation on the scope of paragraph (1), Network Rail may temporarily stop up, alter or divert the streets specified in columns (1) and (2) of Schedule 9 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the deposited plans, in column (3) of that Schedule.

(5) Network Rail must 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 must not be unreasonably withheld.

(6) Any person who suffers loss by the suspension of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(7) If within 28 days of receiving an application for consent under paragraph (5)(b) a street authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that street authority is deemed to have granted consent.

Construction and maintenance of new or altered streets

10.—(1) This article applies to streets which are not a byway open to all traffic, restricted byway, bridleway or footpath.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed with the street authority, be maintained by and at the expense of Network Rail for a period of 12 months from its completion and from the expiry of that period by and at the expense of the street authority.

(3) Paragraph (2) does 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 is not liable to maintain the surface of any street under or over which the scheduled works are constructed, or the immediate approaches to any such street.

(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 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 street to which the action relates was not dangerous to traffic.

(5) For the purposes of a defence under paragraph (4), the court must 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; and
- (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.

(6) Nothing in this article—

- (a) affects the operation of section 87 (prospectively maintainable highways) of the 1991 Act; and Network Rail is not by reason of any duty under this article to maintain a street to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or
- (b) has effect in relation to the street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Access to works

11.—(1) Network Rail may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 10 (access to works); and
- (b) with the approval of the highway authority, 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 fails to notify Network Rail of its decision within 28 days of receiving an application for approval under paragraph (1)(b), that highway authority is deemed to have granted approval.

Highways subject to redesignation

12.—(1) Subject to the provisions of this article, the highways specified in column (2) of Schedule 4 (redesignation of highways) shall, on completion of works, cease to be highways of the description specified on the definitive map and statement as specified in column (3) and are designated as highways as described in column (4) of Schedule 4.

(2) In each case where a highway has been redesignated, the redesignation is to have effect as if that highway had been stopped up and immediately redesignated as described in column (4) of Schedule 4.

(3) Expressions used in this article and in the Wildlife and Countryside Act 1981(1) have the same meaning in this article as in that Act.

Closure of level crossings subject to opening of new rights of way

13.—(1) Subject to paragraphs (3) and (5), the level crossings specified in column (2) of Part 1 of Schedule 2 (closure of level crossings) are stopped-up and discontinued.

(2) Subject to paragraphs (3) and (5), upon the stopping up and discontinuance of the level crossings referred to in paragraph (1)—

(a) any rights of way over those crossings are extinguished to the extent specified in column (2) of Part 1 in Schedule 2; and

(b) any public rights of way specified in column (3) of Part 1 of Schedule 2 are extinguished to the extent specified, by reference to the numbers and letters shown on the deposited plans.

(3) Paragraphs (1) and (2) are not to have effect until in respect of each level crossing in Part 1 of Schedule 2—

(a) the new highway specified in column (4) has been constructed and completed, to the extent specified by reference to the numbers and letters shown on the deposited plans, to the reasonable satisfaction of the highway authority in accordance with article 15 (creation and maintenance of new highway) and is open for use; and

(b) such other alterations to existing highways authorised by this Order, as agreed with the highway authority, have been made.

(4) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(5) This article does not extinguish the rights of statutory undertakers.

Closure of level crossings

14.—(1) Subject to paragraphs (3) and (4) and, the level crossings listed in column (2) of Part 2 of Schedule 2 (closure of level crossings) are stopped-up and discontinued.

(2) Upon the stopping up and discontinuance of the level crossings referred to in paragraph (1)—

(a) any rights of way over those crossings are extinguished; and

(b) any public rights of way specified in column (3) of Part 2 of Schedule 2 are extinguished to the extent specified, by reference to the numbers and letters shown on the deposited plans.

(3) Any person who suffers loss by the suspension or extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(1) 1981 c. 69.

(4) This article does not apply so as to extinguish the rights of statutory undertakers to maintain their apparatus.

Creation and maintenance of new highway

15.—(1) The new highways specified in column (4) of Part 1 in Schedule 2 (closure of level crossings) 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 after the expiry of that period by and at the expense of the highway authority.

(2) On completion of each new highway in accordance with paragraph (1), and subject to article 29 (traffic regulation), it is to have the designation specified in column (4) of Part 1 in Schedule 2.

(3) Section 28(2) (compensation for loss caused by public path creation order) of the 1980 Act is to apply to each new highway specified in column (4) of Part 1 in Schedule 2 as if that new highway had been created by a public path creation order.

(4) Section 28 of the 1980 Act has effect with the modifications mentioned in paragraphs (5) to (7).

(5) In sub-section (1), substitute “Network Rail” for “the authority by whom the Order was made”.

(6) For sub-section (2), substitute—

“(2) A claim for compensation under this section is to be made to Network Rail in writing before the end of the period of 6 months beginning with the day on which the public right of way first becomes exercisable and is to be served on Network Rail by delivering it at, or by sending it by pre-paid post to the registered office of Network Rail Infrastructure Limited.”

(7) Sub-section (3) is omitted.

(8) For the purposes of paragraphs (3) to (7), 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 by virtue of section 307(1), is to have effect as if in sub-section (2) for “the authority from whom the compensation in question is claimed”, the words “Network Rail” are substituted.

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

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

- (a) the character of the new highway and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a highway 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 highway;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new highway to which the action relates was likely to cause danger to users of the new highway;

(2) Section 28 was amended by [S.I. 2006/1177](#).

- (e) where Network Rail could not reasonably have been expected to repair that part of the new highway 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 highway 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 highway and that the competent person had carried out those instructions.

(11) The new highways are 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 it is satisfied with the work within 28 days of receiving the request.

(12) Where any highway created under this article passes over a scheduled work, the highway extends to include the scheduled work.

Supplemental powers

Discharge of water

16.—(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction, operation or maintenance of the authorised works and for that purpose may lay down, take up and alter pipes and may, on any land within the Order limits, make openings into, and connections with, the watercourse, public sewer or drain.

(2) Any dispute arising from the making of connections to or the use of a public sewer or drain by Network Rail under paragraph (1) is to be determined as if it were a dispute under section 106 (right to communicate with public sewers) of the Water Industry Act 1991⁽³⁾.

(3) Network Rail must not discharge any water into any watercourse, public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.

(4) Network Rail must not make any opening into any public sewer or drain except—

- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, but such approval must not be unreasonably withheld; and
- (b) where that person has been given the opportunity to supervise the making of the opening.

(5) Network Rail must not, in the exercise of the powers conferred by this article, damage or interfere with the bed or banks of any watercourse forming part of a main river.

(6) Network Rail must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers conferred by this article is as free as may be practicable from gravel, soil or other solid substance, oil or matter in suspension.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016⁽⁴⁾.

(8) If a person who receives an application for consent or approval fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (3) or approval under paragraph (4)(a) that person is deemed to have granted consent or given approval, as the case may be.

(9) In this article—

(3) 1991 c. 56. Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the Competition and Service (Utilities) Act 1992 (c. 43), sections 36(2) and 99 of the Water Act 2003 (c. 37) and paragraph 16(1) of Schedule 3 to the Flood and Water Management Act 2010 (c. 29).

(4) S.I. 2016/1154.

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, or a local authority; and
- (b) other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991(5) have the same meaning as in that Act.

Power to survey and investigate land

17.—(1) Network Rail may for the purposes of this Order—

- (a) survey or investigate any land shown within the Order limits;
- (b) without limitation on the scope of sub-paragraph (a), make trial holes in such positions on the land as Network Rail thinks fit to investigate the nature of the surface layer and subsoil and remove soil samples;
- (c) without limitation on the scope of sub-paragraph (a), carry out ecological or archaeological investigations on such land;
- (d) place on, leave on and remove from the land apparatus for use in connection with the survey and investigation of land and making of trial holes; and
- (e) enter on the land for the purpose of exercising the powers conferred by sub-paragraphs (a) to (d).

(2) No land may be entered or equipment placed or left on or removed from the land under paragraph (1) unless at least 7 days’ notice has been served on every owner and occupier of the land.

(3) Notice given in accordance with paragraph (2) must include—

- (a) a statement of the recipient’s rights under paragraph (14); and
- (b) a copy of any warrant issued under paragraph (7).

(4) If Network Rail proposes to do any of the following, the notice must include details of what is proposed—

- (a) searching, boring or excavating;
- (b) leaving apparatus on the land;
- (c) taking samples; and
- (d) an aerial survey.

(5) If Network Rail obtains a warrant after giving notice in accordance with paragraph (2) it must give a copy of the warrant to whom it gave that notice.

(6) Any person entering land under this article on behalf of Network Rail—

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph (7);
- (b) may not use force unless a justice of the peace has issued a warrant under paragraph (7) authorising the person to do so;
- (c) may take onto the land such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes;
- (d) may only enter and survey at a reasonable time; and
- (e) must, if the land is unoccupied or the occupier is absent from the land when the person enters it, leave it secure against trespassers as when the person entered it.

(7) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

(5) 1991 c. 57.

- (a) that another person has prevented or is likely to prevent the exercise of that power; and
- (b) that it is reasonable to use force in the exercise of that power.

(8) The force that may be authorised by the warrant is limited to that which is reasonably necessary.

(9) A warrant authorising the person to use force must specify the number of occasions on which Network Rail can rely on the warrant when entering and surveying or valuing land.

(10) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

(11) Any evidence in proceedings for a warrant under this article must be given on oath.

(12) No trial holes are to be made under this article—

- (a) in a carriageway or footway without the consent of the highway authority; or
- (b) in a private street without the consent of the street authority,

but such consent must not be unreasonably withheld.

(13) Network Rail must compensate the owners and occupiers of the land for any loss or damage arising by reason of the exercise of the powers conferred by this article, such compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(14) If either a highway authority or a street authority which receives an application for consent fails to notify Network Rail of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (12)(a) in the case of a highway authority; or
- (b) under paragraph (12)(b) in the case of a street authority,

that authority is deemed to have granted consent.