
STATUTORY INSTRUMENTS

2022 No. 820

The Northumberland Line Order 2022

PART 3

CROSSINGS AND HIGHWAYS

Creation and maintenance of new highways

10.—(1) On completion of each highway specified in column (4) of Schedule 2 (replacement and closure of level crossings) and column (4) of Part 1 of Schedule 3 (streets to be stopped up) to the reasonable satisfaction of the highway authority, that highway is to have the designation specified in column (4) of Schedule 2 and column (4) of Part 1 of Schedule 3, as the case may be.

(2) 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 a public path creation order.

(3) The application of section 28 of the 1980 Act, as applied by paragraph (2), has effect with the following modifications—

(a) in subsection (1), substitute “Northumberland County Council” for “the authority by whom the Order was made”;

(b) for subsection (2), substitute—

“(2) A claim for compensation under this section shall be made to Northumberland County Council in writing within six months from the coming into force of the Northumberland Line Order 2022 and is to be served on Northumberland County Council by delivering it at, or by sending it by pre-paid post to the registered office of Northumberland County Council”; and

(c) subsection (3) is omitted.

(4) For the purposes of paragraphs (2) and (3), section 307 (disputes as to compensation which are to be determined by Upper Tribunal and related provisions)(2) of the 1980 Act, in its application to section 28 by virtue of subsection (1), is to have effect as if in subsection (2) for “the authority from whom the compensation in question is claimed”, the words “Northumberland County Council” are substituted.

(5) In any action against the Council in respect of loss or damage resulting from any failure by it to maintain a highway created under this Order, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that the Council 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.

(6) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

(1) Section 28 was amended by [S.I. 2007/1177](#).

(2) Subsections (1) and (2) were amended by section 84(6) of and Part 5 of Schedule 19 to, the Planning and Compensation Act 1991 (c. 34), and [S.I. 2009/1307](#).

- (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 the Council 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; and
- (e) where the Council 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 the Council 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 the Council 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.

(7) This article does not apply in relation to the structure of any bridge or underpass carrying a highway created under this Order over or under the railway.