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STATUTORY INSTRUMENTS

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**2024 No. 526**

**The Network Rail (Church Fenton  
Level Crossing Reduction) Order 2024**

**PART 2**

**WORKS PROVISIONS**

*Principal powers*

**Power to construct and maintain works**

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

(2) Subject to article 7 (power to deviate) the scheduled works may only be constructed in the lines or situations shown on the deposited plan and in accordance with the levels shown on the deposited sections.

(3) Network Rail may on the land specified in columns (1) and (2) of Part 1 (ancillary works) of Schedule 2 (acquisition of land for ancillary and associated works) carry out and maintain any works specified in relation to that land in column (3) of that Schedule with all works as may be necessary or expedient in connection with those works.

(4) Network Rail may on land specified in columns (1) and (2) of Schedule 3 (acquisition of new rights only) carry out and maintain any works specified in relation to that land in column (3) of that Schedule with all works as may be necessary or expedient in connection with those works.

(5) Subject to paragraph (7), Network Rail may carry out and maintain such of the following works as may be necessary or expedient for the purposes of, or for purposes ancillary to, the construction of the scheduled works, namely—

- (a) buildings, yards, machinery, plant, apparatus, track drainage works, fencing, platforms, platform shelters, and other works and conveniences;
- (b) make, provide and maintain all such approaches, ramps, footbridges, subway, lifts, stairs, passages, shafts and stagings, means of access, turning places, footpaths, bridleways, cycle tracks, gates, including temporary means of access from a highway to adjoining land;
- (c) embankments, cuttings, aprons, abutments, retaining walls, wing walls and culverts;
- (d) works to install or alter the position of apparatus, including mains, sewers, drains and cables;
- (e) works to alter or remove any structure erected upon any highway or adjoining land; and
- (f) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse.

(6) Subject to paragraph (7), 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 authorised works.

(7) Paragraphs (5) and (6) 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 Part 1 (ancillary works) of Schedule 2 (acquisition of land for ancillary and associated works) for the purpose specified in column (3) of that Schedule; or
- (b) land specified in columns (1) and (2) of Schedule 4 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule and in relation to the authorised works specified in column (4) of that Schedule.

(8) Network Rail may, within the Order limits, but excluding land specified within Part 2 (associated works) of Schedule 2—

- (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**

7. In constructing or maintaining any of the scheduled works, Network Rail may—

- (a) deviate laterally from the lines or situations shown on the deposited plan 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 1 metre; or
  - (ii) to any extent downwards as may be found to be necessary or convenient.

#### *Level Crossings*

#### **Accommodation crossings**

8.—(1) Subject to paragraph (2), all public or private rights of way (if any) across the railway by means of the accommodation facilities specified in columns (2) and (3) of Schedule 5 (accommodation crossings for which a substitute is to be provided), are extinguished.

(2) Paragraph (1) does not take effect with respect to the extinguishment of the private rights of way by means of an accommodation facility specified in columns (2) and (3) Schedule 5 until the replacement facility specified in relation to it in column (4) of that Schedule has been provided.

(3) 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, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.

#### **Power to execute street works**

9.—(1) Network Rail may, for the purposes of the authorised works, enter upon any of the streets specified in Schedule 6 (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 subparagraphs (a), (b) and (c).
- (2) In this article, “apparatus” has the same meaning as in Part 3 of the 1991 Act.

### **Power to alter layout etc. of streets**

**10.** Network Rail may for the purposes of the authorised works alter the layout of, or carry out any works in, the streets specified in columns (1) and (2) of Schedule 8 (streets subject to alteration of layout) in the manner specified in relation to that street in column (3).

### **Temporary stopping up of streets**

**11.**—(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 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 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 (determination of questions of disputed compensation) 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.

(8) When making an application for consent under paragraph (5)(b), Network Rail must notify the street authority of the effect of paragraph (7).

### **Access to works**

**12.**—(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 at or about the points marked “A” on the deposited plan; 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.

(3) When making an application for approval under paragraph (1)(b), Network Rail must notify the highway authority of the effect of paragraph (2).

### **Construction and maintenance of new or altered highways**

**13.**—(1) Any highway to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed in writing between Network Rail and the highway authority in whose area the highway lies, must 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 highway authority.

(2) Where a highway is altered or diverted under this Order, the altered or diverted part of the highway must, when completed to the reasonable satisfaction of the highway authority in whose area the highway lies, unless otherwise agreed between Network Rail and the highway 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 highway authority.

(3) Paragraphs (1) and (2) do not apply in relation to the structure of any bridge carrying a highway over or under any railway of Network Rail.

(4) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain a highway 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 highway 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 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 highway;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway; and
- (e) where Network Rail could not reasonably have been expected to repair that part of the 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 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 highway and that the competent person had carried out those instructions.

### **Construction of bridges**

**14.**—(1) Any bridge to be constructed under this Order for carrying a highway over or under a railway must be constructed in accordance with the plans and specifications approved by the highway authority but such approval is not to be unreasonably withheld.

(2) If within 28 days of receiving an application for approval under paragraph (1) a highway authority fails to notify Network Rail of its decision or refuses approval without giving any grounds for its refusal that highway authority is deemed to have granted approval.

(3) When making an application for approval under paragraph (1), Network Rail must notify the street authority of the effect of paragraph (2).

### **Agreements with street authorities**

- 15.**—(1) A street authority and Network Rail may enter into agreements with respect to—
- (a) the construction of any new street (including any structure carrying the street over or under a railway) under the powers conferred by this Order;
  - (b) the strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
  - (c) the maintenance of the structure of any bridge constructed under the powers conferred by this Order;
  - (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
  - (e) the execution in the street of any of the works referred to in article 9(1) (power to execute street works).
- (2) Such an agreement may, without limitation on the scope of paragraph (1)—
- (a) make provision for the street authority to carry out any function under this Order which relates to the street in question; and
  - (b) contain such terms as to payment and otherwise as the parties consider appropriate.

### *Supplemental powers*

### **Discharge of water**

**16.**—(1) Subject to paragraphs (3) to (5), 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 exercise of the powers conferred by paragraph (1) to connect to or use a public sewer or drain 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(1).

(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.

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(1) 1981 c. 56, Section 106 was amended by sections 35(1) and (8) and 43(2) of, and Schedule 2 to, the Competition and Services (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).

(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) (requirement of environmental permit) of the 2016 Regulations<sup>(2)</sup>.

(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) Where making an application for consent under paragraph (3) or an application for approval under paragraph (4)(a), Network Rail must notify the effect of paragraph (8).

(10) In this article—

“the 2016 Regulations” means the Environmental Permitting (England and Wales) Regulations 2016;

“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

other expressions, excluding watercourse, used both in this article and in the Water Resources Act 1991<sup>(3)</sup> 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 (15); and
- (b) a copy of any warrant issued under paragraph (8).

(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;

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(2) S.I. 2016/1154.

(3) 1991 c. 57.

- (c) taking samples;
  - (d) an aerial survey;
  - (e) carrying out any other activities that may be required to facilitate compliance with the Conservation of Habitats and Species Regulations 2017(4).
- (5) If Network Rail obtains a warrant after giving notice in accordance with paragraph (2) it must give a copy of the warrant to all those 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; and
  - (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 as 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—
- (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 a 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) 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.
- (14) When making an application for approval under paragraph (12), Network Rail must notify the relevant authority of the effect of paragraph (13).
- (15) 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 (determination of questions of disputed compensation) of the 1961 Act.

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**Status:** This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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