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SCOTTISH STATUTORY INSTRUMENTS

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**2010 No. 188**

**The Network Rail (Waverley Steps) Order 2010**

**PART 2**

**WORKS PROVISIONS**

*Principal Powers*

**Power to construct, operate and maintain works**

3.—(1) Network Rail may construct, operate and maintain the scheduled works.

(2) Subject to article 4, the scheduled works may only be constructed in the lines or situations shown on sheet no. 1 of the Order plans and in accordance with the levels shown on the Order sections.

(3) Subject to paragraph (5), Network Rail may carry out, operate and maintain such ancillary works of the sort broadly described in Schedule 2 as may be necessary or expedient for the purposes of, in connection with or in consequence of the construction or use of the scheduled works.

(4) Network Rail may carry out ancillary works of the sort broadly described in paragraph 7 of Schedule 2 to provide for, or share with, the apparatus or street furniture of any other person, and may permit the use of those works on terms and conditions agreed with that other person.

(5) Paragraph (3) only authorises the carrying out, operation or maintenance of ancillary works of the sort broadly described—

- (a) in paragraphs 2 and 8 of Schedule 2 within the limits of deviation; and
- (b) in paragraphs 1, 3, 9 and 11 of that Schedule within the Order limits.

**Permitted deviation**

4. In constructing or maintaining any scheduled work Network Rail may—

- (a) deviate laterally from the lines or situations shown on sheet no. 1 of the Order plans within the limits of deviation for that work shown on that sheet; and
- (b) deviate vertically from the levels shown on the Order sections—
  - (i) in the case of Work No. 1, upwards by a maximum of 0.5 metres;
  - (ii) in the case of Work No. 3, upwards by a maximum of 1.5 metres; and
  - (iii) in the case of so much of Work No. 1 as is within plots nos. 1 and 11, and Work No. 3, to any extent downwards.

### **Power to execute road works**

5.—(1) For the purpose of exercising the powers conferred by this Order to construct and maintain any scheduled work having a junction with a road(1), Network Rail may enter upon any road and execute any works required for or incidental to the exercise of those powers.

(2) In exercise of the powers of paragraph (1) Network Rail may break up or open the road, or any sewer, drain or tunnel under it, may tunnel or bore under or open the road and may remove and use the soil or other materials in the road.

### **Access to works**

6.—(1) Network Rail may, for or in connection with the authorised works, form and lay out means of access, or improve existing means of access, to or from any public road—

- (a) at the points shown on sheet no. 1 of the Order plans; and
- (b) in such other location or locations within the Order limits as may be approved by the roads authority.

(2) Approval of the roads authority under paragraph (1)(b) shall not be unreasonably withheld or delayed and any dispute as to whether an approval has been unreasonably withheld or delayed shall, unless the parties otherwise agree, be determined by arbitration.

### **Agreements with roads authority**

7.—(1) Where this Order authorises the execution of road works, Network Rail may enter into agreements with the roads authority concerning the construction (or contribution towards the expense of construction) of those road works and any related matters.

(2) Network Rail may, by agreement with the roads authority, delegate to that authority the power of executing the road works.

### **Permanent stopping up of road**

8.—(1) Subject to the provisions of this article, Network Rail may, in connection with the construction of Work No. 1, stop up Waverley Steps.

(2) Not less than seven days before stopping up Waverley Steps under this article Network Rail shall place notices of the stopping up in conspicuous positions at either end of Waverley Steps.

(3) Network Rail shall take all reasonable steps to secure that the notices displayed in accordance with paragraph (2) shall continue to be displayed in a legible form throughout the seven days preceding the stopping up under this article.

(4) On the stopping up of Waverley Steps under this article all rights of passage over Waverley Steps (other than any such right created under this Order) shall be extinguished.

(5) Where a private right of passage is exercisable over land, in addition to Waverley Steps, which is within Network Rail's operational land outside the Order limits, the right extinguished by paragraph (4) shall be the whole of that right as affecting all the operational land to which it relates.

(6) Any person who suffers loss by the extinguishment of any private right of passage under this article shall be entitled to compensation.

(7) Any dispute as to a person's entitlement to compensation under paragraph (6), or as to the amount of compensation, shall be determined under the 1963 Act.

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(1) For the relevant definition of "road" see the Transport and Works (Scotland) Act 2007 (asp 8), section 23(1) and the New Roads and Street Works Act 1991 (c.22), section 107.

## **Construction, maintenance and vesting of Work No. 2**

9.—(1) Work No. 2 shall, unless otherwise agreed between Network Rail and the roads authority, be completed to the reasonable satisfaction of the roads authority.

(2) Following completion of Work No. 2, that work shall, unless otherwise agreed—

- (a) between Network Rail and the roads authority under this article; or
- (b) by agreement under article 38,

be maintained by and at the expense of Network Rail for a period of 12 months from its completion.

(3) On the date provided by paragraph (7), Work No. 2 shall by virtue of this article vest in the roads authority as a public road.

(4) Network Rail shall give the roads authority notice in writing with a certificate that Work No. 2 is complete.

(5) The roads authority may, within 21 days after such service, give Network Rail a counter-notice in writing that the notice is disputed on the ground that Work No. 2 is not complete.

(6) Any dispute as to—

- (a) the completion of Work No. 2 (other than a dispute as to the date referred to in paragraph (7)(c)); or
- (b) the appointment of a consultant for the purpose of paragraph (8),

shall be determined by arbitration, and the determination of the arbiter (or other person to whom the dispute is referred) shall be final and binding.

(7) Work No. 2 shall vest—

- (a) 28 days after the service of notice under paragraph (4);
- (b) on the date of a determination under paragraph (6) that Work No. 2 is complete; or
- (c) on the date on which Network Rail complies with any conditions for completion that are specified in the determination,

whichever is the latest.

(8) A certificate issued by or on behalf of Network Rail as to the date on which Network Rail complied with any conditions of the sort referred to in paragraph (7)(c) together, if so requested by the roads authority, with a report from a consultant to be agreed between Network Rail and the roads authority confirming such compliance, shall for the purposes of this article be conclusive evidence of such compliance.

(9) Nothing in this article shall prejudice the operation of section 146 of the 1991 Act (which enables the local roads authority to declare that a road shall become a public road); and Network Rail shall not by reason of any duty under this article to maintain a road be taken to be the roads authority in relation to that road for the purposes of Part 4 of that Act.

### *Supplementary powers*

## **Temporary stopping up, alteration or diversion of roads**

10.—(1) During and for the purposes of the execution of the authorised works Network Rail may temporarily stop up, alter or divert any road and may for any reasonable time—

- (a) divert the traffic from the road; and
- (b) subject to paragraph (4), prevent all persons from passing along the road.

(2) Without prejudice to the generality of paragraph (1), Network Rail may exercise the powers conferred by paragraph (1) in relation to so much of Princes Street and Waverley Bridge as is within an area of temporary stopping up shown on sheet no. 1 of the Order plans.

(3) Without prejudice to the generality of paragraph (1), Network Rail may use any road temporarily stopped up under the powers of this article as a temporary work site.

(4) Network Rail shall provide reasonable access for pedestrians going to or from premises abutting on a road affected by the exercise of the powers conferred by paragraph (1) if there would otherwise be no such access.

(5) Network Rail shall not exercise the powers conferred by paragraph (1) without the consent of the road works authority.

(6) Consent under paragraph (5) shall not be unreasonably withheld or delayed but may be given subject to any reasonable conditions which the road works authority may require.

(7) Any dispute as to whether—

(a) consent under paragraph (5) has been unreasonably withheld or delayed; or

(b) a condition imposed under paragraph (6) is unreasonable,

shall, unless the parties otherwise agree, be determined by arbitration.

### **Discharge of water**

**11.**—(1) Subject to the provisions of this article, 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—

(a) lay down, take up and alter pipes; or

(b) make openings into, and connections with, the watercourse, public sewer or drain,

on any land within the Order limits.

(2) Network Rail shall not discharge any water into any artificial watercourse, or any public sewer or drain, except with the consent of the person to whom it belongs; and that person may impose reasonable terms and conditions but shall not unreasonably withhold consent or delay giving it.

(3) Network Rail shall not make any opening into any public sewer or drain except in accordance with plans approved by, and under the superintendence (if provided) of, the person to whom the sewer or drain belongs, but that person shall not unreasonably withhold consent or delay giving it.

(4) Network Rail shall take all reasonably practicable steps to secure that any water discharged under the powers conferred by this article is as free as is practicable from gravel, soil or other solid substance or oil or matter in suspension.

(5) Any dispute under this article arising between Network Rail and the owner of an artificial watercourse or a public sewer or drain shall, unless the parties otherwise agree, be determined by arbitration.

(6) Nothing in this article affects the operation of Part 4 of the 1991 Act or the Water Environment (Controlled Activities) (Scotland) Regulations 2005(2).

(7) In this article—

“public sewer or drain” means a sewer or drain which belongs to Scottish Water, a private provider who has made an agreement with Scottish Water under section 1(2)(b) of the Sewerage (Scotland) Act 1968(3) (provision of private sewer connections) or a roads authority; and

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(2) S.S.I. 2005/348; relevant amending instruments are S.S.I. 2006/553, 2007/219 and 2008/54.

(3) 1968 c.47; section 1(2) was substituted by the Local Government etc. (Scotland) Act 1994 (c.39), Schedule 13, paragraph 75(2) (b) and was amended by the Water Industry (Scotland) Act 2002 (asp 3), schedule 5, paragraph 3.

“watercourse” includes all rivers, streams, ditches, drains, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain.

### **Safeguarding works to buildings**

**12.**—(1) Subject to the provisions of this article, Network Rail may at its own expense and from time to time carry out such works of the sort described in paragraph (2) as Network Rail considers to be necessary or expedient.

(2) The works referred to in paragraph (1) are safeguarding works, whether within or outside the Order limits, to any building situated wholly or partly on land within those limits.

(3) Safeguarding works may be carried out—

- (a) at any time before or during the construction of any part of the authorised works; or
- (b) after the completion of the construction of the authorised works, at any time up to the end of the period of five years beginning with the day on which the authorised works are first opened for public use.

(4) Schedule 3 has effect.

(5) Network Rail shall compensate the owners and occupiers of any building or land in relation to which the powers conferred by this article and Schedule 3 have been exercised for any loss or damage arising to them by reason of the exercise of those powers.

(6) Where—

- (a) safeguarding works to a building are carried out under this article; and
- (b) within the period of 12 years beginning with the day on which the authorised works are first opened for public use, it appears that the safeguarding works are inadequate to protect the building against damage caused by the construction or operation of the authorised works,

Network Rail shall compensate the owners and occupiers of the building for any damage sustained by them.

(7) Nothing in this article relieves Network Rail from any liability to pay compensation under the Lands Clauses Acts.

(8) Any dispute as to a person’s entitlement to compensation under paragraph (5) or as to the amount of compensation shall be determined under the 1963 Act.

(9) In this article and Schedule 3 “safeguarding works”, in relation to a building, means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building by the construction, operation or maintenance of the authorised works; and
- (b) any works the purpose of which is to remedy any damage which has been caused to the building by the construction, operation or maintenance of the authorised works.

### **Power to survey and investigate land**

**13.**—(1) Network Rail may, in relation to any land within the Order limits, for the purposes of this Order—

- (a) survey or investigate the land;
- (b) without prejudice to the generality of paragraph (a), make trial holes in such positions as the Network Rail thinks fit on the land to investigate the nature of the surface layer and subsoil and remove water and soil samples;
- (c) without prejudice to the generality of paragraph (a), carry out archaeological investigations on the land;

- (d) take steps to protect or remove any flora or fauna on the land where the flora or fauna may be affected by the carrying out of the authorised works;
  - (e) place on, leave on and remove from the land, or, where the land is occupied by a building any part of which is on adjoining land outside the Order limits, that adjoining land, apparatus for use in connection with the exercise of any power conferred by paragraphs (a) to (d); and
  - (f) enter on the land, or, where the land is occupied by a building any part of which is on adjoining land outside the Order limits, that adjoining land, for the purpose of exercising any power conferred by paragraphs (a) to (e).
- (2) Before exercising any powers conferred by paragraph (1), Network Rail shall give—
- (a) on the first occasion at least seven days’; and
  - (b) on subsequent occasions not less than three days’,
- notice in writing to every owner and occupier of the land.
- (3) Any person entering land under this article on behalf of Network Rail—
- (a) shall, if so required, before or after entering the land produce written evidence of authority to do so; and
  - (b) may enter with such vehicles and equipment as are necessary for the purpose of exercising any of the powers conferred by paragraph (1).
- (4) No trial hole may be made under this article in a carriageway<sup>(4)</sup> or footway without the consent of the road works authority, but such consent shall not be unreasonably withheld.
- (5) Any dispute as to whether consent has been unreasonably withheld under paragraph (4) shall, unless the parties otherwise agree, be referred to arbitration.
- (6) Network Rail shall pay compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land.
- (7) Any dispute as to a person’s entitlement to compensation under paragraph (6), or as to the amount of compensation, shall be determined under the 1963 Act.
- (8) For the purposes of this article “footway” shall be construed in accordance with section 151(2) of the 1984 Act.

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<sup>(4)</sup> See the definition in the Roads (Scotland) Act 1984 (c.54), section 151, applied by the Transport and Works (Scotland) Act 2007 (asp 8), section 23(1).