
STATUTORY INSTRUMENTS

2004 No. 389

The Network Rail (West Coast Main Line) Order 2004

PART II

WORKS PROVISIONS

Principal Powers

Power to construct and maintain certain works

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

(2) Subject to article 6, the scheduled works shall be constructed in the lines or situations shown on the deposited plans 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 Schedule 2 to this Order carry out and maintain any works specified in relation to that land in column (3) of that Schedule with all necessary works and conveniences in connection therewith.

Power to construct and maintain ancillary works

5.—(1) Subject to paragraph (3), Network Rail may do such of the following as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the authorised works, namely—

- (a) construct and maintain such offices and other buildings, yards, machinery, plant, apparatus and other works and conveniences as Network Rail thinks fit;
- (b) make, provide and maintain all such approaches, bridges, subways, interchanges, roundabouts, turning places, lifts, stairs, escalators, ramps, passages, means of access, shafts and stagings as Network Rail thinks fit;
- (c) make junctions and communications (including the provision of steps or ramps for the use of persons on foot) with any highway or access way intersected or interfered with by, or contiguous to, any of those works, and widen or alter any highway or access way for the purpose of connecting it with any of those works or another highway, or of crossing under or over the highway or access way;
- (d) construct, provide and maintain all such embankments, aprons, abutments, retaining walls, wing walls, culverts and other works as may be necessary or convenient;
- (e) alter or remove any structure erected upon any highway or adjoining land;
- (f) alter the position of apparatus, including mains, sewers, drains and cables; and
- (g) alter the course of, or otherwise interfere with, non-navigable rivers, streams or watercourses.

(2) Subject to paragraph (3), Network Rail may carry out and maintain such other works (of whatever nature) as may be necessary or expedient for the purposes of, in connection with or in consequence of, the construction of the authorised works.

(3) Paragraphs (1) and (2)—

- (a) shall only authorise the carrying out or maintenance of works outside the limits of deviation for the scheduled works if the works are carried out on land specified in columns (1) and (2) of Schedule 2 to this Order for the purpose specified in relation to that land in column (3) of that Schedule; and
- (b) shall not authorise the carrying out or maintenance of works to alter the course of, or otherwise interfere with, navigable rivers or watercourses.

(4) Any power authorised by paragraph (1)(c) which affects a highway shall not be exercised without the written consent of the relevant highway authority, but such consent shall not be unreasonably withheld.

(5) 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 or operation of the authorised works; and
- (b) carry out and maintain works for the benefit or protection of land affected by the authorised works.

Power to deviate

6.—(1) 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 within the limits of deviation for that work shown on those plans; and
- (b) deviate vertically from the levels shown on the deposited sections—
 - (i) in the case of Work Nos. 2A, 3, 3A, 3B, 4, 6, 7, 7A, 8, 9, 9A, 10, 10A, 10B, 10C, 11, 12, 13A, 13B and 14 to any extent not exceeding 0.75 metres upwards or downwards; and
 - (ii) in the case of any of the remaining works, to any extent not exceeding 3 metres upwards or downwards.

(2) In constructing or maintaining the temporary vehicular bridges referred to in article 28(2), Network Rail may deviate vertically from the levels shown on the deposited sections—

- (a) in the case of the bridge referred to in article 28(2)(a), to any extent not exceeding 0.75 metres upwards or downwards; and
- (b) in the case of the bridge referred to in article 28(2)(b), to any extent not exceeding 0.75 metres upwards.

Level Crossings

Replacement of road level crossing

7.—(1) Subject to paragraph (3), the level crossing specified in columns (1) and (2) of Schedule 3 to this Order shall be stopped up and discontinued.

(2) Subject to paragraph (3) and paragraph 2 of Schedule 12 to this Order, upon the stopping up and discontinuance of the level crossing referred to in paragraph (1), any right of way over the part of the street specified in relation to it in column (3) of Schedule 3 to this Order shall be extinguished.

(3) Paragraphs (1) and (2) shall not take effect with respect to the level crossing until the accommodation works specified in relation to it in column (4) of Schedule 3 to this Order have been completed to the reasonable satisfaction of the street authority and are open for use.

(4) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

Replacement of footpath level crossings

8.—(1) Subject to paragraph (3), each specified footpath shall be stopped up and discontinued.

(2) Subject to paragraph (3) and paragraph 2 of Schedule 12 to this Order, upon the stopping up and discontinuance of a specified footpath, any right of way over it shall be extinguished.

(3) Paragraphs (1) and (2) shall not take effect with respect to a footpath specified in columns (1) and (3) of Schedule 4 to this Order until the footpath specified in relation to it in column (4) of that Schedule is open for use in accordance with the reasonable requirements of the highway authority.

(4) In providing the footpaths specified in column (4) of Schedule 4 to this Order, Network Rail may within the Order limits erect barriers and signs and carry out or provide any ancillary works or conveniences, subject to the agreement of the highway authority which agreement shall not be unreasonably withheld.

(5) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(6) In this article “specified footpath” means any of the footpaths or lengths of footpath specified in columns (1) and (3) of Schedule 4 to this Order which are crossed on the level by Network Rail’s railway at the level crossings specified in column (2) of that Schedule.

Accommodation crossings

9.—(1) Subject to paragraphs (3) and (4) and notwithstanding anything in section 68 of the Railways Clauses Consolidation Act 1845 as incorporated in the Trent Valley Railway Act 1845(1) or any other enactment or instrument, all private rights of way (if any) across the West Coast Main Line railway by means of the accommodation facilities in the district of Lichfield, in the county of Staffordshire, specified in paragraph (2), shall be extinguished.

(2) The accommodation facilities referred to in paragraph (1) are—

- (a) Comberford Level Crossing, between points C1 and C2;
- (b) Tamborn Park Farm Underbridge 88, between points C3 and C4; and
- (c) Overbridge 90, between points C5 and C6.

(3) Paragraph (1) shall not take effect with respect to the extinguishment of the private rights of way by means of the level crossing specified in paragraph (2)(a) until the alternative accommodation access has been provided.

(4) Paragraph (1) shall not take effect with respect to the extinguishment of the accommodation crossings specified in paragraph (2)(b) and (c) until Work Nos. 9 and 9A have been completed.

(5) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(6) In this article, “alternative accommodation access” means the access to be provided, specified in column (3) of Schedule 2 to this Order, on the land numbered 248 on the deposited plans in the borough of Tamworth, in the county of Staffordshire and on the land numbered 2, 5 and 8 in the district of Lichfield.

Streets

Power to execute street works

10.—(1) Network Rail may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 5 to this Order as is within the Order limits and may—

- (a) place apparatus in the street,
 - (b) maintain apparatus in the street or change its position, and
 - (c) execute any works required for or incidental to any works referred to in sub-paragraphs (a) and (b) (including, in particular, breaking up or opening the street, or any sewer, drain or tunnel under it, or tunnelling or boring under the street).
- (2) This article is subject to paragraph 3 of Schedule 12 to this Order.
- (3) In this article “apparatus” has the same meaning as in Part III of the Street Works Act.

Permanent stopping up of streets and extinguishment of rights

11.—(1) Subject to the provisions of this article, Network Rail may, in connection with the construction of the authorised works, permanently stop up each of the streets specified in columns (1) and (2) of Parts I and II of Schedule 6 to this Order to the extent specified in column (3) of those Parts of that Schedule.

(2) Subject to paragraph (5), no street specified in columns (1) and (2) of Part I of Schedule 6 to this Order shall be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, and which is specified in relation to it in column (4) of that Part of that Schedule, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route, which has been approved by the street authority (such approval not to be unreasonably withheld), is available between the commencement and termination points of the street to be stopped up pending completion of the new street in accordance with sub-paragraph (a).

(3) No street specified in columns (1) and (2) of Part II of Schedule 6 to this Order shall be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the relevant land; and for this purpose “relevant land” means any land which abuts on either side of the street to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) Network Rail is in possession of the land,
- (b) there is no right of access to the land from the street concerned,
- (c) there is reasonably convenient access to the land otherwise than from the street concerned, or
- (d) the owners and occupiers of the land have agreed to the stopping up.

(5) In the case of the stopping up of footpath FP 1R/2293 between points F9 and F10—

- (a) paragraph (2) shall not apply, and
- (b) the new street to be substituted for that part of that footpath which is specified in relation to it in column (4) of Part I of Schedule 6 shall be completed to the reasonable satisfaction of the street authority as soon as reasonably practicable after the completion of the relevant part of Work Nos. 1 and 2.

(6) Where a street has been permanently stopped up under this article—

- (a) all rights of way over or along the street so stopped up shall be extinguished (other than, in the case of Ludgate/Tennyson Avenue between points F1/S1 and F2/S2 and Roman Way between points F18/S3 and S4, in the borough of Tamworth, a right of way on foot); and
- (b) Network Rail may, without making any payment but subject to sections 77 to 85E of, and Schedules 1 to 3 to, the Railways Clauses Consolidation Act 1845 (which relate to minerals under railways) appropriate and use for the purposes of its railway undertaking so much of the site of the street as is bounded on both sides by land owned by Network Rail.

(7) Any person who suffers loss by the extinguishment of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

(8) This Article is subject to paragraph 2 of Schedule 12 to this Order and is without prejudice to articles 7 and 8.

Temporary stopping up of streets

12.—(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 prejudice to the generality of paragraph (1), Network Rail may use any street stopped up under the powers of this article as a temporary working site.

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

(4) Without prejudice to the generality of paragraph (1), Network Rail may exercise the powers conferred by this article in relation to the streets specified in columns (1) and (2) of Schedule 7 to this Order within the Order limits.

(5) Network Rail shall 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, but such consent shall not be unreasonably withheld.

(6) The provisions of the Street Works Act mentioned in paragraph (7), and any regulations made, or code of practice issued or approved under, those provisions shall apply (with the necessary modifications) in relation to the stopping up, alteration or diversion of a street by Network Rail under the powers conferred by this article where no street works are executed in that street as they would apply if the stopping up, alteration or diversion were occasioned by street works executed in that street by Network Rail.

(7) The provisions of the Street Works Act referred to in paragraph (6) are—

- section 54 (advance notice of certain works);
- section 55 (notice of starting date of works);
- section 59 (general duty of street authority to co-ordinate works);
- section 60 (general duty of undertakers to co-operate);
- section 69 (works likely to affect other apparatus in the street);
- section 76 (liability for cost of temporary traffic regulation);
- section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

(8) Any person who suffers loss by the suspension of a private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part I of the 1961 Act.

Temporary parking restrictions

13.—(1) Subject to the provisions of this article, Network Rail may prohibit or restrict the waiting or the loading or unloading of vehicles on the specified roads for the purpose of enabling or facilitating access over those roads by vehicles used in the construction of Work Nos. 1 and 2.

(2) A prohibition or restriction under paragraph (1) shall apply for such period of time as shall be determined by Network Rail to be necessary for the purposes of the construction of Work Nos. 1 and 2 and may apply at all times during that period or at such times, on such days or during such periods as may be determined by Network Rail.

(3) Network Rail shall not exercise the powers of this article unless it has—

- (a) consulted with the traffic authority in whose area the roads are situated;
- (b) given not less than 12 weeks' notice in writing of its intention so to do to the chief officer of police and to the traffic authority; and
- (c) advertised its intention in such manner as the traffic authority may, within 28 days of its receipt of notice of the undertakers' intention, specify in writing.

(4) Any prohibition or restriction made by Network Rail under paragraph (1) shall have effect as if duly made by the traffic authority in whose area the road is situated as a traffic regulation order under the 1984 Act.

(5) In this article—

- (a) “the 1984 Act” means the Road Traffic Regulation Act 1984(2);
- (b) “specified roads” means Cherry Street and Cross Street, in the borough of Tamworth, in the county of Staffordshire; and
- (c) expressions used in this article and the 1984 Act shall have the same meaning as in that Act.

Access to works

14. Network Rail may, for the purposes of the authorised works—

- (a) form and lay out means of access, or improve existing means of access, to the streets specified in columns (1) and (2) of Schedule 8 to this Order at or about the points marked “A”; and
- (b) with the approval of the highway authority (such approval not to be unreasonably withheld), form and lay out means of access, or improve existing means of access, at such other locations within the Order limits as Network Rail reasonably requires for the purposes of the authorised works.

Construction and maintenance of new or altered streets

15.—(1) Any street to be constructed under this Order shall be completed to the reasonable satisfaction of the highway authority and shall, unless otherwise agreed, be maintained by and at the expense of Network Rail for a period of 24 months from its completion and at the expiry of that period—

- (a) in the case of a highway, by and at the expense of the highway authority; and

(2) 1984 c. 27.

(b) in the case of a new private access, by and at the expense of the owners and occupiers.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street shall when completed to the reasonable satisfaction of the street authority, unless otherwise agreed, be maintained by and at the expense of Network Rail for a period of 24 months from its completion and at the expiry of that period by and at the expense of the street authority.

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

(4) Nothing in this article shall prejudice the operation of section 87 of the Street Works Act (prospectively maintainable highways); and Network Rail shall not by reason of any duty under this article to maintain a street be taken to be the street authority in relation to that street for the purposes of Part III of that Act.

(5) Nothing in this article shall have effect in relation to street works as respects which the provisions of Part III of the Street Works Act apply.

Construction of bridges and tunnels

16. Any bridge or tunnel to be constructed or reconstructed under this Order for carrying a highway over or under a railway shall be constructed or reconstructed in accordance with plans and specifications approved by the highway authority, but such approval shall not be unreasonably withheld.

Agreements with street authorities

17.—(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 maintenance of the structure of any bridge or tunnel carrying a street over or under a railway;
- (c) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (d) the execution in the street of any of the works referred to in article 10(1).

(2) Such an agreement may, without prejudice to the generality 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

Temporary closure of part of Coventry Canal

18.—(1) In this article “the waterway” means so much of the Coventry Canal and the towing path, numbered 191 to 195 on the deposited plans, at Huddlesford in the district of Lichfield in the county of Staffordshire as lies within the Order limits.

(2) Network Rail, during and for the purpose of the construction of Work Nos. 1, 2 and 12 and the bridge referred to in article 28(2), may temporarily close and de-water any part of the waterway and divert barges and other boats from any part of the waterway.

(3) During the period of the closure referred to in paragraph (2), all rights of navigation along, and obligations of the British Waterways Board to maintain for navigation, the waterway or part thereof so closed shall be suspended and unenforceable against the British Waterways Board.

(4) Any person who suffers loss by the suspension of any right under this article shall be entitled to be paid by Network Rail compensation, to be determined in the case of dispute by the tribunal.

Discharge of water

19.—(1) Network Rail may use any watercourse or any public sewer or drain for the drainage of water in connection with the construction 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, sewer or drain.

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

(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 authority to which the sewer or drain belongs, but such approval shall not be unreasonably withheld.

(4) Network Rail shall 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.

(5) Network Rail shall 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 or oil or matter in suspension.

(6) This article does not authorise the entry into controlled waters of any matter whose entry or discharge into controlled waters is prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991(3).

(7) In this article—

- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, an internal drainage board, a local authority or a joint planning board;
- (b) “watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain; and
- (c) other expressions used both in this article and in the Water Resources Act 1991 have the same meaning as in that Act.

Protective works to buildings

20.—(1) Subject to the following provisions of this article, Network Rail may at its own expense and from time to time carry out such protective works to any building within the Order limits and lying within 35 metres of any of the authorised works as Network Rail considers to be necessary or expedient.

(2) Protective works may be carried out—

- (a) at any time before or during the construction in the vicinity of the building of any part of the authorised works; or
- (b) after the completion of the construction of that part of the authorised works, at any time up to the end of the period of 5 years beginning with the day on which that part of the authorised works is first opened for use.

(3) 1991 c. 57.

(3) For the purpose of determining how the functions under this article are to be exercised Network Rail may enter and survey any building falling within paragraph (1) and any land belonging to it.

(4) For the purpose of carrying out protective works under this article to a building Network Rail may (subject to paragraphs (5) and (6))—

- (a) enter the building and any land belonging to it; and
- (b) where the works cannot be carried out reasonably conveniently without entering land adjacent to the building, enter the adjacent land (but not any building erected on it).

(5) Before exercising—

- (a) a right under paragraph (1) to carry out protective works to a building;
- (b) a right under paragraph (3) to enter a building;
- (c) a right under paragraph (4)(a) to enter a building or land; or
- (d) a right under paragraph (4)(b) to enter land,

Network Rail shall, except in the case of emergency, serve on the owners and occupiers of the building or land not less than 14 days' notice of its intention to exercise that right and, in a case falling within sub-paragraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land concerned may, by serving a counter-notice within the period of 10 days beginning with the day on which the notice was served, require the question whether it is necessary or expedient to carry out the protective works or to enter the building or land to be referred to arbitration under article 44.

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

(8) Where—

- (a) protective works are carried out under this article to a building; and
- (b) within the period of 5 years beginning with the day on which the part of the authorised works constructed within the vicinity of the building is first opened for use it appears that the protective works are inadequate to protect the building against damage caused by the construction or operation of that part of the works,

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

(9) Nothing in this article shall relieve Network Rail from any liability to pay compensation under section 10(2) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) shall be determined, in case of dispute, under Part I of the 1961 Act.

(11) In this article—

- (a) “building” includes any structure or erection or any part of a building, structure or erection;
- (b) any reference to a building within a specified distance of a work includes—
 - (i) in the case of a work under the surface of the ground, a reference to any building within the specified distance of the point on the surface below which the work is situated; and
 - (ii) where a work has not commenced, a reference to a building within the specified distance of the proposed site of the work; and
- (c) “protective works”, in relation to a building, means—

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

Power to survey and investigate land

- 21.**—(1) Network Rail may for the purposes of this Order—
- (a) survey or investigate any land within the Order limits;
 - (b) without prejudice to the generality of sub-paragraph (a), make trial holes in such positions as it thinks fit on any such land to investigate the nature of the surface layer and subsoil and remove soil samples;
 - (c) without prejudice to the generality of sub-paragraph (a), carry out ecological or archaeological investigations on any such land;
 - (d) place on, leave on and remove from the land apparatus for use in connection with the exercise of any of the powers conferred by sub-paragraphs (a) to (c); 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) 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 his authority to do so; and
 - (b) may take with him such vehicles and equipment as are necessary to carry out the survey or investigation or to make the trial holes.
- (4) No trial holes shall be made under this article in a carriageway or footway without the consent of the street authority, but such consent shall not be unreasonably withheld.
- (5) Network Rail shall make compensation for any damage occasioned, by the exercise of the powers conferred by this article, to the owners and occupiers of the land, such compensation to be determined, in case of dispute, under Part I of the 1961 Act.
- (6) Nothing in this article shall obviate any need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(4).