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STATUTORY INSTRUMENTS

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**2017 No. 1150**

**The Network Rail (Buxton Sidings Extension) Order 2017**

**PART 2**

**WORKS PROVISIONS**

*Streets*

**Power to execute street works**

**8.**—(1) Network Rail may, for the purposes of the authorised works, enter upon so much of any of the streets specified in Schedule 3 (streets subject to street works) as is within the Order limits and may—

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

**Stopping up of street**

**9.**—(1) Subject to the provisions of this article, Network Rail may, in connection with the construction of the authorised works, stop up the street specified in columns (1) and (2) of Schedule 4 (street to be stopped up for which a substitute is to be provided) to the extent specified, by reference to the letters and numbers shown on the deposited plans, in column (3) of that Schedule.

(2) The street specified in columns (1) and (2) of Schedule 4 is not to be wholly or partly stopped up under this article unless—

- (a) the new street to be substituted for it, which is specified in column (4) of Schedule 4, has been completed to the reasonable satisfaction of the street authority and is open for use; or
- (b) a temporary alternative route for the passage of such traffic as could have used the street to be stopped up is first provided and afterwards maintained by Network Rail, to the reasonable satisfaction of the street authority, between the commencement and termination points for the stopping up of the street until the completion and opening of the new street in accordance with sub-paragraph (a).

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

- (a) all rights of way over or along the street stopped up are extinguished; and
- (b) Network Rail may 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.

(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, under Part 1 of the 1961 Act.

(5) This article is subject to paragraph 2 of Schedule 11 (provisions relating to statutory undertakers etc.) and paragraph 4 of Part 1 of Schedule 12 (for the protection of specified undertakers).

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

**10.**—(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 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 exercise of the powers conferred by this article if there would otherwise be no such access.

(4) Without limitation on the scope 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 5 (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 in Schedule 5 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, 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.

### **Access to works**

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

- (a) form and lay out means of temporary access, or temporarily improve existing means of access, at the location specified in columns (1) and (2) of Schedule 6 (access to works) at or about the point marked ‘A’ on the deposited plans; and
- (b) with the approval of the highway authority, such approval not to be unreasonably withheld, 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 within 28 days of receiving an application for approval under paragraph (1)(b) a highway authority fails to notify Network Rail of its decision that highway authority is deemed to have given approval.

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

**12.—**(1) Any street to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed between Network Rail and the highway authority, 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 street is altered under this Order, the altered 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 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 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.

### **Agreements with street authorities**

**13.—**(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 constructed under the powers conferred by this Order;
- (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 8(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.

**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 specification approved by the highway authority, but such approval must not 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.