
STATUTORY INSTRUMENTS

2017 No. 1150

The Network Rail (Buxton Sidings Extension) Order 2017

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 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 (acquisition of certain lands for ancillary works), 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 with those works.

(4) Subject to paragraph (6), 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 scheduled works, namely—

- (a) construction of electrical equipment, signalling and permanent way works;
- (b) buildings, yards, machinery, plant, apparatus, track drainage works, fencing and other works and conveniences;
- (c) approaches, ramps, stairs, passages, means of access, provision of temporary means of access, shafts and stagings;
- (d) embankments, cuttings, aprons, abutments, retaining walls, wing walls and culverts;
- (e) works to alter or remove any structure erected upon any highway or adjoining land;
- (f) works to alter the position of apparatus, including mains, sewers, drains, cables and street furniture;
- (g) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (h) landscaping and works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (i) works for the benefit or protection of premises affected by the scheduled works.

(5) Subject to paragraph (6), 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 scheduled works, other than works that would interfere with a navigable watercourse.

(6) Paragraphs (4) and (5) 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 Schedule 2 (acquisition of certain lands for ancillary works) for the purpose specified in relation to that land in column (3) of that Schedule;
- (b) land specified in columns (1) and (2) of Schedule 8 (acquisition of new rights only) for the purposes specified in relation to that land in column (3) of that Schedule; or
- (c) land specified in columns (1) and (2) of Schedule 9 (land of which temporary possession may be taken) for the purposes specified in column (3) of that Schedule.

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 plans 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 not exceeding 3 metres upwards; or
 - (ii) to any extent downwards as may be found to be necessary or convenient.

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.

Supplemental powers

Discharge of water

15.—(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, 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.

(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.

⁽¹⁾ 1991 c. 56. Section 106 was amended by sections 35(1) and (8) of, and Schedule 2 to, the Competition and Service (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).

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the Environmental Permitting (England and Wales) Regulations 2016(2).

(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) 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 or a local authority; and
- (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991(3) have the same meaning as in that Act.

Protective works to buildings

16.—(1) Subject to the following provisions of this article, Network Rail may at its own expense carry out such protective works to any building lying within the Order limits 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 a building of any part of the authorised works; or
- (b) after the completion of the construction of that part of the authorised works in the vicinity of a building 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) For the purpose of determining how the functions under this article are to be exercised Network Rail may (subject to paragraph (5)) enter and survey any building falling within paragraph (1) and any land within its curtilage.

(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 within its curtilage; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to a building but outside its curtilage, 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 and land within its curtilage;
- (c) a right under paragraph (4)(a) to enter a building and land within its curtilage; or
- (d) a right under paragraph (4)(b) to enter land,

Network Rail must, 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 subparagraph (a) or (c), specifying the protective works proposed to be carried out.

(6) Where a 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

(2) S.I. 2016/1154.

(3) 1991 c. 57.

to carry out the protective works or to enter the building to be referred to arbitration under article 42 (arbitration).

(7) Network Rail must compensate the owners and occupiers of any building or land in relation to which the powers conferred by 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 in 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 authorised works,

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

(9) Without affecting article 41 (no double recovery) nothing in this article relieves Network Rail from any liability to pay compensation under section 10(2)(4) (further provision as to compensation for injurious affection) of the 1965 Act.

(10) Any compensation payable under paragraph (7) or (8) is to be determined, in case of dispute, under Part 1 of the 1961 Act.

(11) In this article “protective 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, maintenance or operation of the authorised works;
- (b) 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; and
- (c) any works the purpose of which is to secure the safe operation of the authorised works or to prevent or minimise the risk of such operation being disrupted.

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 as Network Rail thinks fit on the land 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) Any person entering land under this article on behalf of Network Rail—

(4) Section 10 was amended by section 4 of, and paragraph 13(2) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so; and
 - (b) 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.
- (4) 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.
- (5) 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, under Part 1 of the 1961 Act.
- (6) Nothing in this article obviates the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979⁽⁵⁾.
- (7) If either a highway authority or street authority fails to notify Network Rail of its decision within 14 days of receiving an application for consent—
- (a) under paragraph 4(a) in the case of a highway authority; or
 - (b) under paragraph 4(b) in the case of a street authority,
- that authority is deemed to have granted consent.

(5) 1979 c. 46.