
STATUTORY INSTRUMENTS

2018 No. 937

**The Network Rail (Felixstowe Branch Line
Improvements – Level Crossings Closure) Order 2018**

PART 2

WORKS PROVISIONS

Streets

Level crossings and highways to be stopped up

5.—(1) Subject to the provisions of this article, the level crossings listed in column (2) of Parts 1 and 2 of Schedule 3 (level crossings and highways to be stopped up) are stopped up and discontinued.

(2) Upon the stopping up and discontinuance of the level crossings referred to in paragraph (1)—

- (a) all rights of way (whether public or private) over those crossings are extinguished; and
- (b) all public rights of way over the highways specified in column (3) of Parts 1 and 2 of Schedule 3 are extinguished to the extent specified by reference to the points identified by letters and numbers.

(3) Paragraph (2)(a) has effect regardless of anything in section 68 (accommodation works by company) of the Railways Clauses Consolidation Act 1845(1) as incorporated in the Felixstowe Railway and Pier Act 1875(2) or any other enactment or instrument.

(4) Upon the stopping up and discontinuance of Grimston Lane Level Crossing, section 15(5)(b) (further works and powers) of the British Transport Commission Act 1959(3) ceases to have effect.

(5) Upon the stopping up and discontinuance of Keeper's Lane Level Crossing, the Railtrack Keeper's Lane Level Crossing Order 1999(4) is revoked.

(6) In respect of the level crossings listed in Part 1 of Schedule 3, paragraphs (1) and (2) are not to have effect until the new highway or highways specified in column (4) in relation to that level crossing has or have been provided to the reasonable satisfaction of the highway authority in accordance with article 6 (creation and maintenance of new footpaths or bridleways) and is or are open for use.

(7) Any person who suffers loss by reason of the 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.

(8) This article is subject to Schedule 4 (apparatus and rights of statutory undertakers etc. in stopped up highways).

(1) 1845 c. 20.

(2) 1875 c. cxiv.

(3) 1959 c. xliv.

(4) An order made by the Secretary of State under section 1 of the Level Crossings Act 1983 (c. 16) on 8th March 1999 and which came into force on 21st March 1999.

Creation and maintenance of new footpaths or bridleways

6.—(1) The new footpaths and bridleways specified in column (4) of Part 1 of Schedule 3 (level crossings and highways to be stopped up) are to be completed to the reasonable satisfaction of the highway authority and are to be maintained by and at the expense of Network Rail for a period of 12 months from their completion and from the expiry of that period by and at the expense of the highway authority.

(2) Paragraph (1) does not apply in relation to the structure of the bridge forming Work No. 1.

(3) On completion of each new footpath or bridleway in accordance with paragraph (1), a public right of way over it is created by virtue of this paragraph which has the legal status specified in column (5) of Part 1 of Schedule 3.

(4) Section 28 (compensation for loss caused by public path creation order)(5) of the 1980 Act is to apply to each new footpath or bridleway specified in column (4) of Part 1 of Schedule 3 as if the footpath or bridleway had been created by an order under section 26(6) (compulsory powers for the creation of footpaths, bridleways and restricted byways) of that Act.

(5) In its application by virtue of paragraph (4), section 28 of the 1980 Act is to have effect with the modifications mentioned in paragraphs (6) to (8).

(6) In subsection (1), for “the authority by whom the Order was made” substitute “Network Rail Infrastructure Limited”.

(7) For subsection (2), substitute—

“(2) A claim for compensation under this section is to be made to Network Rail Infrastructure Limited in writing within 6 months from the completion of the public right of way concerned in accordance with article 6(1) of the Network Rail (Felixstowe Branch Line Improvements – Level Crossings Closure) Order 2018(7) and is to be served on Network Rail Infrastructure Limited by delivering it at, or by sending it by pre-paid post to the registered office of Network Rail Infrastructure Limited.”.

(8) Omit subsection (3).

(9) For the purposes of paragraphs (4) to (8), section 307 (disputes as to compensation which are to be determined by Lands Tribunal and related provisions) of the 1980 Act, in its application to section 28 by virtue of section 307(1), has effect as if in subsection (2) for “the authority from whom the compensation in question is claimed”, the words “Network Rail Infrastructure Limited” were substituted.

(10) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain the new footpath or bridleway, 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 new footpath or bridleway to which the action relates was not dangerous to traffic.

(11) For the purposes of a defence under paragraph (10), the court must in particular have regard to the following matters—

- (a) the character of the new footpath or bridleway and the use which was reasonably expected to be made of it;
- (b) the standard of maintenance appropriate for a footpath or bridleway of that character and so used;

(5) Section 28 has been amended by [S.I. 2006/1177](#).

(6) Section 26 has been amended by section 1(6) of, and paragraphs 1, 18(1) to (4) of Part 1 of Schedule 1 to, the Infrastructure Act 2015 (c. 7) and by [S.I. 2006/1177](#).

(7) [S.I. 2018/937](#).

- (c) the state of repair in which a reasonable person would have expected to find the new footpath or bridleway;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new footpath or bridleway to which the action relates was likely to cause danger to users of the new footpath or bridleway; and
- (e) where Network Rail could not reasonably have been expected to repair that part of the new footpath or bridleway 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 new footpath or bridleway 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 new footpath or bridleway and that the competent person had carried out those instructions.

(12) A new footpath or bridleway is to be treated as completed to the satisfaction of the highway authority for the purpose of paragraph (1) if it fails to reply to a request for certification that the footpath or bridleway has been so completed within 28 days of receiving the request.

Upgrading of certain footpaths to bridleways

7.—(1) On the completion in accordance with article 6(1) of the new bridleways specified in column (4) of Part 1 of Schedule 3 (level crossings and highways to be stopped up) in the entry relating to Keeper’s Lane Level Crossing, the highways specified in column (2) of Schedule 5 (upgrading of certain footpaths to bridleways) cease to be designated as footpaths on the definitive map and statement and are to be designated as described in column (4) of that Schedule.

(2) In each case where a footpath has been redesignated, the redesignation is to have effect as if that footpath had been stopped up and immediately designated as a bridleway.

(3) Any person who suffers loss by reason of the change of status of the footpaths mentioned in paragraph (1) is entitled to compensation to be determined, in the case of dispute, under Part 1 of the 1961 Act.

Power to survey and investigate land

8.—(1) Network Rail may for the purposes of this Order—

- (a) survey or investigate any land shown within the Order limits or which may be affected by the authorised works;
- (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 of 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 land;
 - (c) taking samples;
 - (d) an aerial survey;
 - (e) carrying out any other activities that may be required to facilitate compliance with the instruments mentioned in paragraph (5).
- (5) The instruments referred to in paragraph (4)(e) are—
- (a) [Directive 2011/92/EU](#) of the European Parliament and of the Council of 13 December 2011 on the assessment of the effects of certain public and private projects on the environment⁽⁸⁾; or
 - (b) Council [Directive 92/42/EEC](#) of 21 May 1992 on the conservation of natural habitats and wild fauna and flora⁽⁹⁾.
- (6) If Network Rail obtains a warrant 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 a notice.
- (7) 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 (8);
 - (b) may not use force unless a justice of the peace has issued a warrant under paragraph (8) authorising the person to do so;
 - (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 land 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.
- (8) 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.
- (9) The force that may be authorised by a warrant is limited to that which is reasonably necessary.
- (10) 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.
- (11) 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.
- (12) Any evidence in proceedings for a warrant under this article must be given on oath.
- (13) 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.

⁽⁸⁾ OJ No. L 26, 28.1.2012, p. 1.

⁽⁹⁾ OJ No. L 206, 22.7.1992, p. 7.

(14) 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 (13)(a) in the case of a highway authority; or
- (b) under paragraph (13)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(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, under Part 1 of the 1961 Act.

(16) Paragraphs (1) to (15) apply in relation to Crown land, however a person may only exercise the power conferred by paragraph (1) in relation to Crown land if the person has the permission of the appropriate authority.

(17) Nothing in this article overrides the requirement to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979⁽¹⁰⁾.

(18) In this article, “Crown land” and “the appropriate authority” have the meaning given in section 293⁽¹¹⁾ (preliminary definitions) of the 1990 Act.

Temporary stopping up and diversion of streets

9.—(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 on 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 or divert the streets specified in columns (1) and (2) of Schedule 6 (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, 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 the refusal that street authority is deemed to have granted consent.

⁽¹⁰⁾ 1979 c. 46.

⁽¹¹⁾ As amended by paragraph 6 of schedule 3 to the Planning and Compulsory Purchase Act 2004 (c. 5), paragraph 7(1) and (4) of Schedule 7 to the Planning (Wales) Act 2015 (anaw 4) and paragraphs 1 and 33 of Schedule 12 to the Housing and Planning Act 2016 (c. 22).