
STATUTORY INSTRUMENTS

2022 No. 1067

**The Network Rail (Huddersfield to Westtown
(Dewsbury) Improvements) Order 2022**

PART 2

WORKS PROVISIONS

Principal powers

Power to construct and maintain works

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

(2) Subject to article 12 (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 together with all works as may be necessary or expedient in connection with those works.

(4) Network Rail may on land specified in columns (1) and (2) of Schedule 10 (acquisition of new rights and imposition of restrictive covenants only) carry out and maintain any works specified in relation to that land in column (3) of that Schedule with all works as may be necessary or expedient in connection with those works.

(5) Network Rail may, on the land specified in columns (1) and (2) of Schedule 13 (power to acquire ground anchor rights) carry out and maintain any works specified in relation to that land in articles 30(4)(a) and 30(4)(b) (power to acquire ground anchor rights) with all works as may be necessary or expedient in connection with those works.

(6) Network Rail may on land specified in columns (1) and (2) of Schedule 14 (acquisition of subsoil) carry out and maintain any works specified in relation to that land in column (3) of that Schedule with all works as may be necessary or expedient in connection with those works.

(7) Network Rail may on land specified in columns (1) and (2) of Schedule 15 (land of which only subsoil may be acquired) carry out and maintain any works specified in relation to that land in article 32(2) (power to acquire subsoil or airspace only) with all works as may be necessary or expedient in connection with those works.

(8) Subject to paragraph (10), 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 construction of the scheduled works, namely—

- (a) construction of electrification works, electrical equipment, signalling and permanent way works;
- (b) buildings, yards, machinery, plant, apparatus, track drainage works, fencing, platforms, platform shelters, and other works and conveniences;

- (c) make, provide and maintain all such approaches, ramps, footbridges, subways, lifts, stairs, passages, shafts and stagings, means of access, turning places, footpaths, bridleways, cycle tracks, gates, including temporary means of access from a highway to adjoining land;
- (d) embankments, cuttings, aprons, abutments, retaining walls, wing walls, ground anchors, rock anchors and culverts;
- (e) works for the strengthening or alteration of viaducts and viaduct pile strengthening works;
- (f) works for the strengthening, alteration or demolition of any building;
- (g) works to alter or remove any structure erected upon any highway or adjoining land;
- (h) works to alter the position of apparatus, including mains, sewers, drains, cables and street furniture;
- (i) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (j) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the scheduled works; and
- (k) works for the benefit or protection of premises affected by the scheduled works.

(9) Subject to paragraph (10), 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 construction of the authorised works.

(10) Paragraphs (8) and (9) 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 10 (acquisition of new rights and imposition of restrictive covenants only) for the purposes specified in column (3) of that Schedule;
- (c) land specified in columns (1) and (2) of Schedule 13 (power to acquire ground anchor rights) for the purposes specified in articles 30(4)(a) and 30(4)(b) (power to acquire ground anchor rights);
- (d) land specified in columns (1) and (2) of Schedule 14 (acquisition of subsoil) for the purposes specified in column (3) of that Schedule;
- (e) land specified in columns (1) and (2) of Schedule 15 (land of which only subsoil may be acquired) for the purposes specified in article 32(2) (power to acquire subsoil or airspace only); or
- (f) land specified in columns (1) and (2) of Schedule 16 (land of which temporary possession may be taken) for the purposes specified in relation to that land in column (3) of that Schedule, relating to the scheduled works specified in column (4) of that Schedule.

(11) 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 and operation of the authorised works (other than works authorised by this paragraph); and
- (b) carry out and maintain works for the benefit or protection of land affected by the authorised works (other than works authorised by this paragraph).

Station works at Huddersfield

9. Network Rail may, in the construction of Work No. 1C, and within the limits of deviation for that work—

- (a) alter and extend Huddersfield station with all necessary works and conveniences connected with that work, including the construction of a new platform, new platform extensions and new canopy over Network Rail’s platforms at the station;
- (b) construct a new passenger footbridge incorporating lifts and staircases at the station; and
- (c) extend the existing passenger subway (MVL3/91) at the station and infill the existing parcel subway (MVL3/91A) at the station.

Station works at Deighton

10. Network Rail may, in the construction of Work No. 5, and within the limits of deviation for that work—

- (a) alter and extend Deighton station with all necessary works and conveniences connected with that work, including the demolition of the two existing platforms and the construction of two new platforms; and
- (b) construct a new passenger footbridge incorporating lifts and staircases at the station.

Station works at Mirfield

11. Network Rail may, in the construction of Work No. 14, and within the limits of deviation for that work—

- (a) alter and extend Mirfield station with all necessary works and conveniences connected with that work, including the demolition of an existing platform and the construction of new platform extensions; and
- (b) construct a new passenger footbridge incorporating lifts and staircases at the station.

Power to deviate

12. 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 upwards not exceeding 0.5 metres in relation to Work Nos. 1A and 1B;
 - (ii) to any extent upwards not exceeding 3 metres; or
 - (iii) to any extent downwards as may be found to be necessary or convenient.

Streets

Power to execute street works

13.—(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 are within the Order limits to the extent necessary 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) This article is subject to paragraph 3 of Schedule 18 (provisions relating to statutory undertakers etc.).
- (3) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

Stopping up of streets

14.—(1) Subject to the provisions of this article, Network Rail may, in connection with the carrying out of the authorised works, stop up each of the streets specified in columns (1) and (2) of Parts 1 and 2 of Schedule 4 (streets to be stopped up) to the extent specified in column (3) of Parts 1 and 2 of that Schedule.

(2) No street specified in columns (1) and (2) of Part 1 of Schedule 4 (streets for which a substitute is to be provided) is to be wholly or partly stopped up under this article unless—

- (a) the new street to be constructed and substituted for it, which is specified in column (4) of that Part of that Schedule, has been constructed and 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 then 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) No street specified in columns (1) and (2) of Part 2 of Schedule 4 (street for which no substitute is to be provided) is to be wholly or partly stopped up under this article unless the condition specified in paragraph (4) is satisfied in relation to all the 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; or
- (b) there is no right of access to the land from the street concerned; or
- (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) Where a street has been stopped up under this article—

- (a) all rights of way over or along the street so stopped up are extinguished; and
- (b) Network Rail may appropriate and use for the purpose of its railway undertaking so much of the site of the street as is bounded on both sides by land owned by Network Rail.

(6) 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, as if it were a dispute under Part 1 of the 1961 Act.

(7) This article is subject to paragraph 2 of Schedule 18 (provisions relating to statutory undertakers etc.).

Power to alter layout etc. of streets

15.—(1) Network Rail may for the purposes of the authorised works alter the layout of, and carry out any works in, the streets specified in columns (1) and (2) of Schedule 5 (streets subject to alteration of layout) in the manner specified in relation to that street in column (3).

(2) Without limiting the scope of the specific powers conferred by article 8 (power to construct and maintain works) or paragraph (1), but subject to paragraph (3), Network Rail may, for the purposes of constructing, maintaining or using the authorised works, alter the layout of any street within the Order limits and the layout of any street having a junction with such a street; and, without limitation on the scope of that power, Network Rail may—

- (a) increase the width of the carriageway of the street by reducing the width of any kerb, footpath, footway, cycle track or verge within the street;
- (b) alter the level or increase the width of any such kerb, footpath, footway, cycle track or verge; and
- (c) reduce the width of the carriageway of the street.

(3) Network Rail must restore to the reasonable satisfaction of the street authority any street which has been temporarily altered under this article.

(4) The powers conferred by paragraph (2) must not be exercised without the consent of the street authority, but such consent must not be unreasonably withheld.

(5) If within 28 days of receiving an application for consent under paragraph (4) 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.

Temporary stopping up of streets

16.—(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 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, as if it were a 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

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

- (a) form and lay out means of access, or improve existing means of access, in the locations specified in columns (1) and (2) of Schedule 7 (access to works) at or about the points marked “A” on the deposited plans; and
- (b) with the approval of the highway authority, 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 a highway authority fails to notify Network Rail of its decision within 28 days of receiving an application for approval, under paragraph (1)(b), the highway authority is deemed to have granted approval.

Construction and maintenance of new or altered streets

18.—(1) With the exception of the street specified in paragraph (6), any street to be constructed under this Order must be completed to the reasonable satisfaction of the highway authority and, unless otherwise agreed in writing 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 at the expiry of that period by and at the expense of the highway authority.

(2) Where a street is altered or diverted under this Order, the altered or diverted part of the street must, when completed to the reasonable satisfaction of the street authority, unless otherwise agreed in writing between Network Rail and the street authority, 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 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 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.

(6) The excepted street in paragraph (1) is the access road on the land numbered 25-049, 25-056 and 25-067 in the district of the Kirklees on the deposited plans.

(7) In the case of the street specified in paragraph (6), the street to be constructed under this Order must be completed to the reasonable satisfaction of the street authority and, unless otherwise agreed in writing between Network Rail and the street authority, must 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.

Construction of bridges

19.—(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 specifications approved by the highway authority, but such approval not to 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.

Agreements with street authorities

20.—(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 strengthening, improvement, repair or reconstruction of any street under the powers conferred by this Order;
- (c) the maintenance of the structure of any bridge constructed under the powers conferred by this Order;
- (d) any stopping up, alteration or diversion of a street under the powers conferred by this Order; or
- (e) the execution in the street of any of the works referred to in article 13(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.

Accommodation Crossings

Accommodation crossings

21.—(1) Subject to paragraph (2) and regardless of anything in the Manchester and Leeds Railway Act 1836, the Manchester and Leeds Railway Act 1837 and section 68 (accommodation works by the Company) of the Railways Clauses Consolidation Act 1845 as incorporated in the Huddersfield and Manchester Railway and Canal Act 1845(1), the Leeds, Dewsbury and Manchester Railway Act 1845, the Huddersfield and Manchester Railway and Canal (Huddersfield Diversion and Cooper Bridge Branch) Act 1846(2) and the London and North Western Railway (Wortley to

(1) 1845 (8 & 9 Vict.) c.v.

(2) 1846 (9 & 10 Vict.) c. cclix.

Leeds etc.) Act 1878⁽³⁾ or any other enactment or instrument, all public or private rights of way (if any) across the railway by means of the accommodation facilities specified in columns (2) and (3) of Parts 1 and 2 Schedule 8 (accommodation crossings), are extinguished.

(2) Paragraph (1) does not take effect with respect to the extinguishment of the private rights of way by means of an accommodation facility specified in columns (2) and (3) of Part 1 of Schedule 8 (accommodation crossings for which a substitute is to be provided) until the accommodation facility specified in relation to it in column (4) of Part 1 of that Schedule has been provided.

(3) Any person who suffers loss by the extinguishment of any private right of way under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

Supplemental powers

Discharge of water

22.—(1) 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 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 in 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⁽⁴⁾.

(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.

(7) Nothing in this article overrides the requirement for an environmental permit under regulation 12(1)(b) (requirement for environmental permit) of the 2016 Regulations.

(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

⁽³⁾ 1878 (41 Vict.) c. ci.

⁽⁴⁾ 1991 c. 56. Section 106 was amended by sections 35(1), 35(8) and 43(2) 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).

- (b) other expressions, excluding watercourses, used both in this article and in the Water Resources Act 1991(5) have the same meaning as in that Act.

Protective works to buildings, roads and apparatus of a statutory undertaker

23.—(1) Subject to the following provisions of this article, Network Rail may at its own expense carry out such protective works to—

- (a) any building; or
- (b) any road; or
- (c) any apparatus of a statutory undertaker,

lying within the Order limits or the protective works 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 the building, road or apparatus 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 the building, road or apparatus 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, go onto and survey, any road or access and survey any apparatus falling within paragraph (1) and any land within the curtilage of the building or in which the apparatus is located.

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

- (a) enter the building, go onto the road or access the apparatus and any land within the curtilage of the building or in which the apparatus is located; and
- (b) where the works cannot be carried out reasonably conveniently without entering land which is adjacent to the building (but outside its curtilage) or adjacent to the road or the land in which the apparatus is located, 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, road or apparatus;
- (b) a right under paragraph (3) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located;
- (c) a right under paragraph (4)(a) to enter a building, go onto a road or access apparatus and land within the curtilage of the building or in which the apparatus is located; 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 or the owner of the road or apparatus 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 a notice is served under paragraph (5)(a), (c) or (d), the owner or occupier of the building or land or the owner of the road or apparatus 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 57 (arbitration).

(7) Network Rail must compensate the owners and occupiers of any building or land or the owner of the road or apparatus 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, road or apparatus falling within paragraph (1); 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, road or apparatus is first opened for use it appears that the protective works are inadequate to protect the building, road or apparatus 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, road or apparatus for any loss or damage sustained by them.

(9) Without affecting article 56 (no double recovery) nothing in this article relieves Network Rail from any liability to pay compensation under section 10(2)(6) (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, as if it were a dispute under Part 1 of the 1961 Act.

(11) In this article—

“protective works” in relation to a building, road or apparatus means—

- (a) underpinning, strengthening and any other works the purpose of which is to prevent damage which may be caused to the building, road or apparatus 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, road or apparatus 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; and

“road” includes any structure supporting the road.

Power to survey and investigate land

24.—(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 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 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).

(6) 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.

(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 the 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⁽⁷⁾; or
- (b) Council Directive [92/43/EEC](#) of 21 May 1992 on the conservation of natural habitats and of wild fauna and flora⁽⁸⁾.

(6) If Network Rail obtains 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 that 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 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.

(7) O.J. No. L 26, 28.1.2012, p.1. Council [Directive 2014/52/EU](#) (O.J. No L 124, 25.4.2014, p.1.

(8) O.J. No. L 206, 22.7.1992, p.7. Council [Directive 2013/17/EU](#) (O.J. No. L 158, 10.6.2013, p.193).

(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.

(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 14 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, as if it were a dispute under Part 1 of the 1961 Act.

(16) Nothing in this article overrides the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(9).

Temporary closure of, and works in the Huddersfield Broad Canal and the Calder and Hebble Navigation

25.—(1) Network Rail may, in connection with the construction of the authorised works—

- (a) temporarily interfere with the relevant parts of the waterways by constructing or maintaining caissons, cofferdams or other temporary works at any point within the relevant part of the waterway as Network Rail considers necessary or expedient;
- (b) temporarily moor or anchor barges or other vessels or craft in the relevant parts of the waterways;
- (c) load or unload into and from such barges, other vessels or craft as are referred to in sub-paragraph (b) equipment, machinery, soil and any other materials; and
- (d) temporarily close to navigation the relevant parts of the waterways.

(2) During the period of any closure referred to in paragraph (1)(d), all rights of navigation and other rights relating to, and any obligations of the Trust to manage, the relevant parts of the waterways so closed are to be suspended and unenforceable against the Trust.

(3) The power conferred by paragraph (1) must be exercised in a way which secures—

- (a) that no more of the relevant parts of the waterways are closed to navigation at any time than is necessary in the circumstances; and
- (b) that, if complete closure to navigation of the relevant parts of the waterways becomes necessary, reasonable steps are taken to secure that the period of closure is kept to a minimum and that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use the part so closed.

(4) Any person who suffers loss or damage as a result of the suspension or interruption of any right under this article is entitled to compensation to be determined, in case of dispute, as if it were a dispute under Part 1 of the 1961 Act.

(9) 1979 c. 46.