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STATUTORY INSTRUMENTS

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**2010 No. 1721**

**The Network Rail (Nuneaton North Chord) Order 2010**

**PART 2**

**WORKS PROVISIONS**

*Principal powers*

**Power to construct and maintain works**

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

(2) Subject to article 6 (power to deviate), the scheduled works may only be constructed in the lines or situations shown on the Order plans and in accordance with the levels shown on the Order sections.

(3) Subject to paragraph (5), 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) railway electrification and signalling works;
- (b) the provision of buildings, yards, machinery, plant, apparatus and other works and conveniences;
- (c) the provision, repair and strengthening of approaches, bridges, subways, turning places, ramps, passages, means of access, shafts and stagings as Network Rail thinks fit;
- (d) the provision of embankments, aprons, abutments, retaining walls, wing walls and culverts;
- (e) works to alter or remove any structure erected on any highway or adjoining land;
- (f) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (g) works to alter the course of, or otherwise interfere with, a watercourse other than a navigable watercourse;
- (h) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised works (other than works authorised by this sub-paragraph); and
- (i) works for the benefit or protection of premises affected by the authorised works (other than works authorised by this paragraph).

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

(5) Paragraphs (3) and (4) shall only authorise the carrying out or maintenance of works outside the limits of deviation if such works are carried out on land specified in columns (1) and (2) of Part 2 of Schedule 4 (acquisition of land) or in columns (1) and (2) of Schedule 7 (land of which temporary

possession may be taken) in each case for the purpose specified in relation to that land in column (3) of the appropriate Schedule.

#### **Power to deviate**

6. In constructing or maintaining any of the scheduled works, Network Rail may—
- (a) deviate laterally from the lines or situations shown on the Order plans to the extent of the limits of deviation for that work; and
  - (b) deviate vertically from the levels shown on the Order 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**

7.—(1) Network Rail may, for the purposes of the authorised works, enter upon so much of any street 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 work referred to in sub-paragraph (a), (b) or (c).
- (2) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

#### **Stopping up of street and extinguishment and creation of rights**

8.—(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 (3) of Schedule 2 (street to be stopped up) to the extent specified, by reference to the letters and numbers shown on the Order plans, in column (4) of that Schedule.

- (2) Network Rail shall not exercise the powers conferred by paragraph (1) until either—
- (a) Work No. 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 subsequently maintained by Network Rail, to the reasonable satisfaction of the street authority, between the commencement and termination points until the completion and opening of Work No. 4 in accordance with sub-paragraph (a).
- (3) When Stoney Road has been stopped up under this article—
- (a) all rights of way over or along so much of Stoney Road as has been so stopped up shall be extinguished; and
  - (b) Work No. 4 shall be subject to rights of way equivalent to such rights of way as are extinguished by sub-paragraph (a).

(4) Any person who suffers loss by the extinguishment or creation of any private right of way under this article shall be 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 8 (statutory undertakers, etc.).

### **Temporary stopping up 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 limiting 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 shall 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 limiting 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 (3) of Schedule 3 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the Order plans, in column (4) of that Schedule.

(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 which may attach reasonable conditions to any consent, but such consent shall not be unreasonably withheld.

(6) Any person who suffers loss by the suspension of any private right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

(7) If a street authority fails to notify Network Rail of its decision within 28 days of receiving an application for consent under paragraph (5)(b), that street authority shall be deemed to have granted consent.

### **Access to works**

**10.**—(1) Network Rail may, for the purposes of the authorised works, and with the approval of the highway authority, such approval not to be unreasonably withheld, form and lay out such 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), that highway authority shall be deemed to have granted approval.

### **Agreements with street authorities**

**11.**—(1) Network Rail and a street authority may enter into agreements with respect to—

- (a) the construction of Work No. 4 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 conferred by article 9 (temporary stopping up of streets); or
  - (d) the execution in the street of any of the works referred to in article 7 (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.

### *Specific works*

#### **Canal Farm Road and Work No. 3: rights**

- 12.—(1) When Work No. 3 has been completed and is open for use—
- (a) all rights of way over or along so much of Canal Farm Road (as existing at the date this Order comes into force) as is within plots nos. 2A, 3 and 3A shall be extinguished; and
  - (b) Work No. 3 shall be subject to rights of way equivalent to the rights of way extinguished by sub-paragraph (a).
- (2) Any person who suffers loss by the extinguishment or creation of any right of way under this article shall be entitled to compensation to be determined, in case of dispute, under Part 1 of the 1961 Act.

#### **Temporary closure of and works in Coventry Canal**

- 13.—(1) Network Rail may in connection with the construction of Work No. 1 or Work No. 2—
- (a) construct and maintain temporary works within plot no. 15; and
  - (b) on grounds of health and safety only, temporarily interfere with or close to navigation any part of the canal within the Order limits.
- (2) During any period of interference or closure referred to in paragraph (1)(b), all rights of navigation and other rights relating to, and any obligations of the British Waterways Board to manage, the part of the canal so interfered with or closed shall be suspended and unenforceable against the British Waterways Board.
- (3) Any person who suffers loss or damage as the result of the suspension or interruption of any right under this article shall be entitled to compensation paid by Network Rail to be determined, in case of dispute, under Part 1 of the 1961 Act.

### *Supplemental powers*

#### **Discharge of water**

- 14.—(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 shall be determined as if it were a dispute under section 106 of the Water Industry Act 1991(1).

(3) Network Rail shall 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 shall not be unreasonably withheld.

(4) Network Rail shall 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 shall not be unreasonably withheld; and

(b) where that person has been given the opportunity to supervise the making of the opening.

(5) 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.

(6) 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, oil or matter in suspension.

(7) 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(2).

(8) If a person 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 shall be 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 the Environment Agency, an internal drainage board, a local authority or a sewerage undertaker; and

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

### **Power to survey and investigate land**

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

(a) survey or investigate any land 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).

(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—

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(1) 1991 c. 56.

(2) 1991 c. 57.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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- (a) shall, if so required, before or after entering the land produce written evidence of that person's 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 hole shall 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 shall not be unreasonably withheld.
- (5) Network Rail shall 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 shall obviate the need to obtain scheduled monument consent under the Ancient Monuments and Archaeological Areas Act 1979(3).
- (7) If either a highway authority or a street authority fails to notify Network Rail of a decision within 28 days of receiving an application for consent under paragraph (4)(a) or (4)(b), as the case may be, that authority shall be deemed to have granted consent.