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STATUTORY INSTRUMENTS

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**2022 No. 820**

**The Northumberland Line Order 2022**

**PART 3**

**CROSSINGS AND HIGHWAYS**

**Closure of level crossings subject to opening of new rights of way**

7.—(1) Subject to paragraphs (3) and (5), each of the level crossings specified in columns (1) and (2) of Schedule 2 (replacement and closure of level crossings) are stopped up and discontinued.

(2) Subject to paragraph (3) and (5) and Part 1 of Schedule 10 (protective provisions), upon the stopping up and discontinuance of each of the level crossings referred to in paragraph (1)—

- (a) the highway specified in relation to that level crossing in column (3) of Schedule 2 is stopped up and extinguished to the extent specified in column (3); and
- (b) any rights of way over those crossings are extinguished.

(3) No level crossing or highway specified in columns (2) or (3) of Schedule 2 is to be extinguished, stopped up or discontinued under this article until the new highway specified in relation to it in column (4) of that Schedule has been completed to the reasonable satisfaction of the highway authority and is open for use.

(4) 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.

(5) This article is subject to paragraph 2 of Schedule 10 (provisions relating to statutory undertakers etc.) to this Order.

**Stopping up of streets**

8.—(1) Subject to the provisions of this article, the Council may stop up each of the streets specified in column (2) of Parts 1 and 2 of Schedule 3 (streets to be stopped up) to the extent specified in column (3) of that Part of that Schedule.

(2) No street specified in column (2) of Part 1 of Schedule 3 (being a street to be stopped up 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 created and substituted for it, which is specified in column (4) of that Part of that Schedule, 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 users who could have used the street to be stopped up is first provided between the commencement and termination points for the stopping up of the street and subsequently maintained by the Council, to the reasonable satisfaction of the street authority, 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 3 to this Order (being a street to be stopped up 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 highway to be stopped up.

(4) The condition referred to in paragraph (3) is that—

- (a) the Council 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) the Council may appropriate and use for the purpose of the development so much of the site of the street as is bounded on both sides by land owned by the Council or 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 10 (provisions relating to statutory undertakers etc.) to this Order.

### **Temporary stopping up and diversion of streets**

9.—(1) The Council, during and for the purposes of the construction of the development, may temporarily stop up 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), the Council may use any street stopped up under the powers conferred by this article within the Order limits as a temporary working site.

(3) The Council must provide reasonable access for pedestrians going to or from premises abutting a street affected by the temporary stopping up 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), the Council may temporarily stop up or divert the streets specified in columns (1) and (2) of Schedule 4 (streets to be temporarily stopped up) to the extent specified, by reference to the letters and numbers shown on the rights of way plans, in column (3) of that Schedule.

(5) The Council 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.

(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.

## Creation and maintenance of new highways

10.—(1) On completion of each highway specified in column (4) of Schedule 2 (replacement and closure of level crossings) and column (4) of Part 1 of Schedule 3 (streets to be stopped up) to the reasonable satisfaction of the highway authority, that highway is to have the designation specified in column (4) of Schedule 2 and column (4) of Part 1 of Schedule 3, as the case may be.

(2) Section 28 (compensation for loss caused by public path creation order)<sup>(1)</sup> 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 a public path creation order.

(3) The application of section 28 of the 1980 Act, as applied by paragraph (2), has effect with the following modifications—

(a) in subsection (1), substitute “Northumberland County Council” for “the authority by whom the Order was made”;

(b) for subsection (2), substitute—

“(2) A claim for compensation under this section shall be made to Northumberland County Council in writing within six months from the coming into force of the Northumberland Line Order 2022 and is to be served on Northumberland County Council by delivering it at, or by sending it by pre-paid post to the registered office of Northumberland County Council”; and

(c) subsection (3) is omitted.

(4) For the purposes of paragraphs (2) and (3), section 307 (disputes as to compensation which are to be determined by Upper Tribunal and related provisions)<sup>(2)</sup> of the 1980 Act, in its application to section 28 by virtue of subsection (1), is to have effect as if in subsection (2) for “the authority from whom the compensation in question is claimed”, the words “Northumberland County Council” are substituted.

(5) In any action against the Council in respect of loss or damage resulting from any failure by it to maintain a highway created under this Order, it is a defence (without affecting any other defence or the application of the law relating to contributory negligence) to prove that the Council had taken such care as in all the circumstances was reasonably required to secure that the part of the new highway to which the action relates was not dangerous to traffic.

(6) For the purposes of a defence under paragraph (5), the court must in particular have regard to the following matters—

(a) the character of the new highway and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a highway of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the new highway;

(d) whether the Council knew, or could reasonably have been expected to know, that the condition of the part of the new highway to which the action relates was likely to cause danger to users of the new highway; and

(e) where the Council could not reasonably have been expected to repair that part of the new highway before the cause of action arose, what warning notices of its condition had been displayed,

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(1) Section 28 was amended by [S.I. 2007/1177](#).

(2) Subsections (1) and (2) were amended by section 84(6) of and Part 5 of Schedule 19 to, the Planning and Compensation Act 1991 (c. 34), and [S.I. 2009/1307](#).

but for the purposes of such a defence it is not relevant to prove that the Council had arranged for a competent person to carry out or supervise the maintenance of the part of the new highway to which the action relates unless it is also proved that the Council had given the competent person proper instructions with regard to the maintenance of the new highway and that the competent person had carried out those instructions.

(7) This article does not apply in relation to the structure of any bridge or underpass carrying a highway created under this Order over or under the railway.

### **Access to works**

**11.** The Council may in connection with the development—

- (a) form and lay out means of access, or alter or improve existing means of access, at the locations marked with an “A” on the land and works plans; and
- (b) with the approval of the highway authority, form and lay out such other means of access or alter or improve existing means of access at such locations within the Order limits as the Council reasonably requires for the purposes of the development.

### **Power to execute street works**

**12.—**(1) The Council may, in connection with the development, enter on so much of any street and may—

- (a) break up or open the street, or any sewer, drain or tunnel under it;
- (b) tunnel or bore under the street;
- (c) place apparatus in the street;
- (d) maintain apparatus in the street or change its position; and
- (e) execute any works required for or incidental to any works referred to in subparagraphs (a), (b), (c) or (d).

(2) The authority given by paragraph (1) is a statutory right for the purposes of sections 48(3) (street, street works and undertakers) and 51(1) of the 1991 Act (prohibition of unauthorised street works).

(3) The Council must not construct works under paragraph (1) without the consent of the street authority, which may attach reasonable conditions to any consent.

(4) In this article “apparatus” has the same meaning as in Part 3 of the 1991 Act.

### **Agreements with street authorities**

**13.—**(1) A street authority may enter into an agreement or agreements with the Council with respect to—

- (a) the execution in the street of any of the works under article 3 (power to construct and maintain works);
- (b) the construction of any new public right of way or street under the powers conferred by this Order and the maintenance of such a new right of way or street; or
- (c) any stopping up, alteration or diversion of any right of way or street under the powers conferred by this Order and the maintenance of any such altered or diverted right of way or street.

(2) Such an agreement may, without prejudice to the generality 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;

- (b) specify the mechanism by which detailed design for works must be approved by the highway authority before works are implemented;
- (c) specify the mechanism by which information regarding any new street can be provided to the street authority to enable modification of the definitive map and statement as defined in section 53(1) (duty to keep definitive map and statement under continuous review)<sup>(3)</sup> of the Wildlife and Countryside Act 1981; and
- (d) contain such terms as to payment and otherwise as the parties consider appropriate.

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<sup>(3)</sup> 1981 c. 69. Section 53(1) was amended by section 51 of, and paragraph 1(2) of Schedule 5 to, the Countryside and Rights of Way Act 2000 (c. 37).