
STATUTORY INSTRUMENTS

2017 No. 257

**The Network Rail (Northumberland Park Level Crossing
and Coppermill Lane Level Crossing Closure) Order 2017**

PART 2

WORKS PROVISIONS

Crossings

Creation and maintenance of new public right of way

7.—(1) The new public right of way is to be completed to the reasonable satisfaction of the highway authority and is to be maintained by and at the expense of Network Rail for a period of 12 months from its completion and after the expiry of that period by and at the expense of the highway authority.

(2) In any action against Network Rail in respect of loss or damage resulting from any failure by it to maintain the new public right of way, it is a defence (without prejudice to 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 public right of way to which the action relates was not dangerous to traffic.

(3) For the purposes of a defence under paragraph (3), the court must in particular have regard to the following matters—

- (a) the character of the new public right of way and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a public right of way 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 public right of way;
- (d) whether Network Rail knew, or could reasonably have been expected to know, that the condition of the part of the new public right of way to which the action relates was likely to cause danger to users of the new public right of way;
- (e) where Network Rail could not reasonably have been expected to repair that part of the new public right of way 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 public right of way 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 public right of way and that the competent person had carried out those instructions.

Status: This is the original version (as it was originally made).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

(4) The new public right of way is to be treated as completed to the satisfaction of the highway authority if the highway authority fails to reply to a request for certification that it is satisfied with the work within 28 days of receiving the request.

(5) This article does not apply in relation to the structure of any bridge carrying the new public right of way over any railway of Network Rail.