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STATUTORY INSTRUMENTS

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**2022 No. 1067**

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

**PART 2**

**WORKS PROVISIONS**

*Supplemental powers*

**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)(1) (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.

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(1) 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.