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STATUTORY INSTRUMENTS

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**2022 No. 1067**

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

**PART 4**

**MISCELLANEOUS AND GENERAL**

**Defence to proceedings in respect of statutory nuisance**

**41.**—(1) Where proceedings are brought under section 82(1) (summary proceedings by person aggrieved by statutory nuisances) of the Environmental Protection Act 1990<sup>(1)</sup> in relation to a nuisance falling within paragraph (g) of section 79(1) (noise emitted from premises so as to be prejudicial to health or a nuisance) of that Act no order is to be made, and no fine may be imposed, under section 82(2)(2) of that Act if the defendant shows—

- (a) that the nuisance relates to premises used by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to authorised works and that the nuisance is attributable to the carrying out of authorised works which are being carried out in accordance with a notice served under section 60 (control of noise on construction sites), or a consent given under section 61(3) (prior consent for work on construction sites); or
- (b) that the nuisance is a consequence of the operation of the authorised works and that it cannot reasonably be avoided.

(2) Section 61(9) (consent for work on construction site to include statement that it does not of itself constitute a defence to proceedings under section 82 of the Environmental Protection Act 1990) of the Control of Pollution Act 1974 does not apply where the consent relates to the use of premises by Network Rail for the purposes of or in connection with the exercise of the powers conferred by this Order with respect to works.

(3) In proceedings for an offence under section 80(4) of the Environmental Protection Act 1990 (offence of contravening abatement notice) in respect of a statutory nuisance falling within section 79(1)(g) or (ga)(4) of that Act where the offence consists in contravening requirements imposed by virtue of section 80(1)(a) or (b)(5) of that Act, it is a defence to show that the nuisance—

- (a) is a consequence of the construction, operation or maintenance of the works authorised by this Order; and
- (b) cannot reasonably be avoided.

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(1) 1990 c. 43. Paragraph 6 of Schedule 17 to the Environment Act 1995 (c. 25).

(2) Section 51(1) and (2) of the Noise and Statutory Nuisance Act 1993 (c. 40). There are other amendments to this subsection which are not relevant to this Order.

(3) Section 61 was amended by Schedule 7 to the Building Act 1984 (c. 55), paragraph 15(3) of Schedule 15 to the Environmental Protection Act 1990 (c. 43), Schedule 24 to the Environment Act 1995 and paragraph 10 of Schedule 6 to the Building (Scotland) Act 2003 (asp. 8).

(4) Section 79(1)(ga) was inserted by subsection 2(2)(b) of the Noise and Statutory Nuisance Act 1993.

(5) Section 80(1) was amended by section 86 of the Clean Neighbourhoods and Environment Act 2005.

(4) The provisions of this article do not affect the application to the authorised works of section 122 (statutory authority as a defence to actions in nuisance, etc.) of the Railways Act 1993(6) or any rule of common law having similar effect.

### **Planning permission**

**42.** Planning permission which is deemed by a direction under section 90(2A)(7) (development with government authorisation) of the 1990 Act to be granted in relation to the authorised works is to be treated as specific planning permission for the purposes of section 264(3)(a) (cases in which land is to be treated as operational land of the purposes of that Act) of that Act.

### **Power to lop trees overhanging the authorised works**

**43.—**(1) Network Rail may fell or lop any tree or shrub near any part of the authorised works, or cut back its roots, if it reasonably believes it to be necessary to do so to prevent the tree or shrub—

- (a) from obstructing or interfering with the construction, maintenance or operation of the authorised works or any apparatus used on the authorised works; or
- (b) from constituting a danger to passengers or other persons using the authorised works.

(2) In exercising the powers conferred by paragraph (1), Network Rail must not cause unnecessary damage to any tree or shrub and must pay compensation to any person for any loss or damage arising from the exercise of those powers.

(3) Any dispute as to a person's entitlement to compensation under paragraph (2), or as to the amount of compensation, is to be determined as if it were a dispute under Part 1 of the 1961 Act.

### **Open space and exchange land**

**44.—**(1) Network Rail will not under the powers of this Order take possession of any part of the special category land until Network Rail has taken possession of the exchange land.

(2) Upon Network Rail taking possession of so much of the special category land as is required for the authorised works that land will be discharged from all rights, trusts and incidents to which it was previously subject.

(3) Network Rail must lay out as replacement open space, before the end of the period of one year beginning with the date the authorised works are first brought into public use, the exchange land of which possession has been taken under paragraph (1).

(4) As soon as Kirklees District Council has certified that the exchange land referred to in paragraph (3) has been laid out to its reasonable satisfaction as replacement open space that land will vest in Kirklees District Council subject to—

- (a) the like rights, trusts and incidents as attached to so much of the special category land of which possession has been taken under paragraph (1); and
- (b) such rights as may be required by Network Rail to carry out monitoring, remedial or maintenance works upon the exchange land for the benefit of the exchange land.

(5) In this article—

“the special category land” means the land described as open space on the plan entitled “Open Space Plans” attached to the deposited plans, which may be acquired compulsorily under this Order and for which exchange land is to be provided; and

“the exchange land” means the land described as exchange land on the plan entitled “Open Space Plans” attached to the deposited plans.

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(6) 1993 c. 43.

(7) Section 90(2A) was inserted by section 16(1) of the Transport and Works Act (c. 42).

### **Open space land**

**45.—**(1) As from the date on which Network Rail enters onto the open space land under section 11(1) of the 1965 Act (powers of entry) or section 8(8) of the Compulsory Purchase (Vesting Declarations) Act 1981 (vesting, and right to enter and take possession) the open space land will be discharged from all rights, trusts and incidents to which it was previously subject.

(2) In this article “the open space land” means the land numbered 2-044, 7-042 and 8-005 in the district of Kirklees on the deposited plans and forming part of an open space within the meaning of section 19(1) of the 1981 Act which the Secretary of State has certified as not exceeding 209 square metres and that the giving in exchange of other land for the open space land is unnecessary for the purposes of section 19(1) of the 1981 Act.

### **Power to operate and use railway**

**46.—**(1) Network Rail may operate and use the railway and other authorised works as a system, or part of a system, of transport for the carriage of passengers and goods.

(2) Nothing in this Order, or in any enactment incorporated with or applied by this Order, affects the operation of Part 1 (the provision of railway services) of the Railways Act 1993.

### **Disapplication of the 1887 Agreement**

**47.—**(1) The provisions of the 1887 Agreement will on the day on which this Order comes into force cease to have effect.

(2) In this article “the 1887 Agreement” means the agreement dated 14<sup>th</sup> November 1887 between (1) the London and North Western Railway Company (2) the Local Board of the District of Ravensthorpe in the County of York and (3) the Local Board of the District Thornhill in the County of York.

### **Obstruction of construction of authorised works**

**48.** Any person who, without reasonable excuse—

- (a) obstructs any person acting under the authority of Network Rail in setting out the lines of the scheduled works or in constructing any authorised work; or
- (b) interferes with, moves or removes any apparatus belonging to any person acting under the authority of Network Rail,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

### **Traffic regulation**

**49.—**(1) Subject to the provisions of this article, and the consent of the traffic authority in whose area the street concerned is situated, which consent must not be unreasonably withheld, Network Rail, may, insofar as may be necessary or expedient for the purposes of, in connection with, or in consequence of the construction, maintenance or operation of the authorised works—

- (a) revoke, amend or suspend in whole or in part any traffic regulation order made, or having effect as if made, under the 1984 Act;
- (b) permit, prohibit or restrict the parking, stopping, waiting, loading or unloading of vehicles on any road;
- (c) suspend or authorise the use as a parking place of any road;

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(8) Section 8 was substituted by paragraph 4 of Schedule 18 to the Housing and Planning Act 2016 (c. 22).

- (d) restrict the speed of vehicles along any road;
- (e) make provision as to the direction or priority of vehicular traffic on any road; and
- (f) permit or prohibit vehicular access to any road,

either at all times or at times, on days or during such periods as may be specified by Network Rail.

(2) The powers conferred by paragraph (1) may be exercised at any time prior to the expiry of 12 months from the opening of the authorised works for public use but subject to paragraph (7) any prohibition, restriction or other provision made under paragraph (1) may have effect both before and after the expiry of that period.

(3) The powers conferred by paragraph (1) may only be exercised after Network Rail has consulted the chief officer of police and the traffic authority in whose area the road concerned before complying with provisions of paragraph (4).

(4) Network Rail must not exercise the powers conferred by paragraph (1) unless it has—

- (a) given not less than—
  - (i) 12 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect permanently; or
  - (ii) 4 weeks' notice in writing of its intention so to do in the case of a prohibition, restriction or other provision intended to have effect temporarily,

to the chief officer of police and to the traffic authority in whose area the street is situated; and

- (b) advertised its intention in such manner as the traffic authority may specify in writing within 28 days of its receipt of notice of Network Rail's intention in the case of sub-paragraph (a)(i), or within 7 days of its receipt of notice of Network Rail's intention in the case of sub-paragraph (a)(ii).

(5) If within 28 days of receiving an application for consent under paragraph (1) a traffic authority fails to notify Network Rail of its decision or refuses consent without giving any grounds for its refusal that traffic authority is deemed to have granted consent.

(6) Any prohibition, restriction or other provision made by Network Rail under paragraph (1)—

- (a) has effect as if duly made by, as the case may be—
  - (i) the traffic authority in whose area the street is situated, as a traffic regulation order under the 1984 Act; or
  - (ii) the local authority in whose area the street is situated, as an order under section 32(9)(power of local authorities to provide parking places) of the 1984 Act,

and the instrument by which it is effected may specify savings and exemptions to which the prohibition, restriction or other provision is subject; and

- (b) be deemed to be a traffic order for the purposes of Schedule 7 to the Traffic Management Act 2004(10) (road traffic contraventions subject to civil enforcement).

(7) Any prohibition, restriction or other provision made under this article may be suspended, varied or revoked by Network Rail from time to time by subsequent exercise of the powers conferred by paragraph (1) within a period of 24 months from the opening of the authorised works for public use.

(8) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

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(9) Section 32 was amended by Schedule 17 to the Local Government Act 1985 (c. 51).

(10) 2004 c. 18.

(9) The powers conferred on Network Rail by this article with respect to any road have effect subject to any agreement entered into by Network Rail with any person with an interest in (or who undertakes activities in relation to) premises served by the road.

### **Traffic signs**

**50.**—(1) Network Rail may, for the purposes of, or in connection with, the construction or operation of, the authorised works, place or maintain traffic signs on any street within the Order limits or which gives access to such a street, or on any street in connection with any instrument made under article 49 (traffic regulation) or any other street as reasonably required for conveying information to traffic.

(2) Network Rail—

- (a) must consult with the traffic authority as to the placing of traffic signs; and
- (b) may subject to any directions given under section 65(11) (powers and duties of traffic authorities as to placing of traffic signs) of the 1984 Act, enter into arrangements with the consent of the traffic authority for the traffic signs to be placed and maintained by the traffic authority, such consent not to be unreasonably withheld.

(3) Any power conferred by section 65 of the 1984 Act to give directions to a traffic authority or local traffic authority as to traffic signs includes a power to give directions to Network Rail as to traffic signs under this article; and the powers conferred by paragraph (1) are exercisable subject to and in conformity with any directions given under that section.

(4) A traffic authority or other authority having power under or by virtue of the 1984 Act to place and maintain, or cause to be placed and maintained, traffic signs on any street referred to in paragraph (1) must consult with Network Rail as to the placing of any traffic signs which may affect the authorised works.

(5) Expressions used in this article and in the 1984 Act have the same meaning in this article as in that Act.

### **Disclosure of confidential information**

**51.** A person who—

- (a) enters a factory, workshop or workplace under the provisions of article 23 (protective works to buildings, roads and apparatus of a statutory undertaker) or article 24 (power to survey and investigate land); and
- (b) discloses to any person any information obtained as a result of that entry and relating to any manufacturing process or trade secret,

is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale unless the disclosure is made in the course of that person's performance of a duty in connection with the purposes for which the person was authorised to enter the land.

### **Statutory undertakers etc.**

**52.** The provisions of Schedule 18 (provisions relating to statutory undertakers etc.) to this Order have effect.

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(11) Section 65 was amended by section 153 of the Local Government and Housing Act 1989 (c. 42) and section 168(1) of, and paragraph 48 of Part 2 of Schedule 8 to, the New Roads and Street Works Act 1991 (c. 22) and section 48 of, and paragraph 29 of Schedule 4 to, the Road Traffic Act 1991 (c. 40) and section 1(6) of, and paragraphs 70 and 82 of Schedule 1 to, the Infrastructure Act 2015 (c. 7).

### **Protection of interests**

53. Schedule 19 (protective provisions) to this Order has effect.

### **Certification of plans etc.**

54. Network Rail must, as soon as practicable after the making of this Order, submit copies of the book of reference, the deposited plans and the deposited sections to the Secretary of State for certification that they are, respectively, true copies of the book of reference, the deposited plans and the deposited sections referred to in this Order; and a document so certified is admissible in any proceedings as evidence of the contents of the document of which it is a copy.

### **Service of notices**

55.—(1) A notice or other document required or authorised to be served for the purposes of this Order may be served—

- (a) by post; or
- (b) with the consent of the recipient and subject to paragraphs (6) to (8) by electronic transmission.

(2) Where the person on whom a notice or other document to be served for the purposes of this Order is a body corporate, the notice or document is duly served if it is served on the secretary or clerk of that body.

(3) For the purposes of section 7 (references to service by post) of the Interpretation Act 1978(12) as it applies for the purposes of this article, the proper address of any person in relation to the service on that person of a notice or document under paragraph (1) is, if that person has given an address for service, that address, and otherwise—

- (a) in the case of the secretary or clerk of a body corporate, the registered or principal office of that body; and
- (b) in any other case, the last known address of that person at the time of service.

(4) Where for the purposes of this Order a notice or other document is required or authorised to be served on a person as having any interest in, or as the occupier of, land and the name or address of that person cannot be ascertained after reasonable enquiry, the notice may be served by—

- (a) addressing it to that person by name or by the description of “owner”, or as the case may be “occupier”, of the land (describing it); and
- (b) either leaving it in the hands of a person who is or appears to be resident or employed on the land or leaving it conspicuously affixed to some building or object on or near the land.

(5) Where a notice or other document required to be served or sent for the purposes of this Order is served or sent by electronic transmission the requirement is taken to be fulfilled where the recipient of the notice or other document to be transmitted has given consent to the use of electronic transmission either in writing or by electronic transmission.

(6) Where the recipient of a notice or other document served or sent by electronic transmission notifies the sender within 7 days of receipt that the recipient requires a paper copy of all or any part of that notice or other document the sender must provide such a copy as soon as reasonably practicable.

(7) Any consent to the use of electronic transmission given by a person may be revoked by that person in accordance with paragraph (8).

(8) Where a person is no longer willing to accept the use of electronic transmission for any of the purposes of this Order—

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(12) 1978 c. 30.

- (a) that person must give notice in writing or by electronic transmission revoking any consent given by that person for that purpose; and
  - (b) such revocation is final and takes effect on a date specified by the person in the notice but that date must not be less than 7 days after the date on which the notice is given.
- (9) This article does not be taken to exclude the employment of any method of service not expressly provided for by it.

**No double recovery**

**56.** Compensation is not payable in respect of the same matter both under this Order and under any other enactment, any contract or any rule of law.

**Arbitration**

**57.** Any difference under any provision of this Order, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after giving notice in writing to the other) by the President of the Institution of Civil Engineers.