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STATUTORY INSTRUMENTS

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**2024 No. 526**

**The Network Rail (Church Fenton  
Level Crossing Reduction) Order 2024**

**PART 2**

**WORKS PROVISIONS**

*Supplemental powers*

**Power to survey and investigate land**

- 17.**—(1) Network Rail may for the purposes of this Order—
- (a) survey or investigate any land shown 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) Notice given in accordance with paragraph (2) must include—
- (a) a statement of the recipient's rights under paragraph (15); and
  - (b) a copy of any warrant issued under paragraph (8).
- (4) If Network Rail proposes to do any of the following, the notice must include details of what is proposed—
- (a) searching, boring or excavating;
  - (b) leaving apparatus on the land;
  - (c) taking samples;
  - (d) an aerial survey;
  - (e) carrying out any other activities that may be required to facilitate compliance with the Conservation of Habitats and Species Regulations 2017(1).

(5) If Network Rail obtains a warrant after giving notice in accordance with paragraph (2) it must give a copy of the warrant to all those to whom it gave that notice.

(6) Any person entering land under this article on behalf of Network Rail—

- (a) must, if so required, before or after entering the land produce written evidence of authority to do so including any warrant issued under paragraph (7);
- (b) may not use force unless a justice of the peace has issued a warrant under paragraph (7) authorising the person to do so; and
- (c) 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;
- (d) may only enter and survey at a reasonable time; and
- (e) must if the land is unoccupied or the occupier is absent from the land when the person enters it, leave it as secure against trespassers as when the person entered it.

(7) A justice of the peace may issue a warrant authorising a person to use force in the exercise of the power conferred by this article if satisfied—

- (a) that another person has prevented or is likely to prevent the exercise of that power; and
- (b) that it is reasonable to use force in the exercise of that power.

(8) The force that may be authorised by a warrant is limited to that which is reasonably necessary.

(9) A warrant authorising the person to use force must specify the number of occasions on which Network Rail can rely on the warrant when entering and surveying or valuing land.

(10) The number specified must be the number which the justice of the peace considers appropriate to achieve the purpose for which the entry and survey or valuation are required.

(11) Any evidence in proceedings for a warrant under this article must be given on oath.

(12) No trial holes are to 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 must not be unreasonably withheld.

(13) If either a highway authority or a street authority which receives an application for consent fails to notify Network Rail of its decision within 28 days of receiving the application for consent—

- (a) under paragraph (12)(a) in the case of a highway authority; or
- (b) under paragraph (12)(b) in the case of a street authority,

that authority is deemed to have granted consent.

(14) When making an application for approval under paragraph (12), Network Rail must notify the relevant authority of the effect of paragraph (13).

(15) Network Rail must 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, as if it were a dispute under Part 1 (determination of questions of disputed compensation) of the 1961 Act.