STATUTORY INSTRUMENTS

2018 No. 446

TRANSPORT AND WORKS, ENGLAND
TRANSPORT, ENGLAND

The Network Rail (Hope Valley Capacity) Order 2018

Made - - - -	*28th March 2018*
Coming into force - -	*18th April 2018*

An application has been made to the Secretary of State in accordance with the Transport and Works (Applications and Objections Procedure) (England and Wales) Rules 2006(**1**) for an Order under sections 1 and 5 of the Transport and Works Act 1992(**2**) ("the 1992 Act).

The Secretary of State has caused an inquiry to be held for the purposes of the application under section 11 of the 1992 Act.

The Secretary of State, having considered the objections made and not withdrawn and the report of the person who held the inquiry, has determined to make an Order giving effect to the proposal comprised in the application with modifications which in the opinion of the Secretary of State do not make any substantial change in the proposals.

Notice of the Secretary of State's determination was published in the London Gazette on 16th February 2018.

The Secretary of State, in exercise of the powers conferred by sections 1 and 5 of, and paragraphs 1 to 5, 7, 8, 10, 11 and 16 of Schedule 1 to, the 1992 Act, makes the following Order:

PART 1

PRELIMINARY

Citation and commencement

1. This Order may be cited as the Network Rail (Hope Valley Capacity) Order 2018 and comes into force on 18th April 2018.

(**1**) S.I. 2006/1466, as amended by S.I. 2010/439, S.I. 2011/556, S.I. 2011/2085, S.I. 2012/147, S.I. 2012/1658, S.I. 2012/2590, S.I. 2013/755 and S.I. 2017/1070.

(**2**) 1992 c. 42. Section 1 was amended by the Planning Act 2008 (c. 29), Schedule 2, paragraphs 51 and 52; section 5 was amended by S.I. 2012/1659.

Interpretation

2.—(1) In this Order—

"the 1961 Act" means the Land Compensation Act 1961(**3**);

"the 1965 Act" means the Compulsory Purchase Act 1965(**4**);

"the 1980 Act" means the Highways Act 1980(**5**);

"the 1981 Act" means the Acquisition of Land Act 1981(**6**);

"the 1984 Act" means the Road Traffic Regulation Act 1984(**7**);

"the 1990 Act" means the Town and Country Planning Act 1990(**8**);

"the 1991 Act" means the New Roads and Street Works Act 1991(**9**);

"the 2003 Act" means the Communications Act 2003(**10**);

"address" includes any number or address used for the purposes of electronic transmission;

"authorised works" means the scheduled works and any other works authorised by this Order or any part of them;

"the book of reference" means the book of reference certified by the Secretary of State as the book of reference for the purposes of this Order;

"building" includes any structure or erection or any part of a building, structure or erection;

"carriageway" has the same meaning as in the 1980 Act;

"the deposited plans" means the plans certified by the Secretary of State as the deposited plans for the purposes of this Order;

"the deposited sections" means the sections certified by the Secretary of State as the deposited sections for the purposes of this Order;

"electronic transmission" means a communication transmitted—

(a) by means of an electronic communications network; or

(b) by other means but while in electronic form;

"footpath" and "footway" have the same meaning as in the 1980 Act;

"highway" and "highway authority" have the same meaning as in the 1980 Act;

"the limits of deviation" means the limits of deviation for the scheduled works shown on the deposited plans;

"the limits of land to be acquired or used" means the limits of land to be acquired or used shown on the deposited plans;

"maintain" includes inspect, repair, adjust, alter, remove, reconstruct and replace, and "maintenance" is to be construed accordingly;

"Network Rail" means Network Rail Infrastructure Limited (Company registration number 02904587) whose registered office is at 1 Eversholt Street, London NW1 2DN;

"the Order limits" means the limits of deviation and the limits of land to be acquired or used;

(**3**) 1961 c. 33.
(**4**) 1965 c. 56.
(**5**) 1980 c .66.
(**6**) 1981 c. 67.
(**7**) 1984 c. 27.
(**8**) 1990 c. 8.
(**9**) 1991 c. 22.
(**10**) 2003 c. 21.

"owner", in relation to land, has the same meaning as in section 7 (interpretation) of the 1981 Act(**11**);

"the scheduled works" means the works specified in Schedule 1 (scheduled works) or any part of them;

"street" includes part of a street;

"street authority", in relation to a street, has the same meaning as in Part 3 of the 1991 Act;

"the traffic regulation plans" means the plans certified by the Secretary of State as the traffic regulation plans for the purposes of this Order;

"the tribunal" means the Lands Chamber of the Upper Tribunal; and

"watercourse" includes all rivers, streams, ditches, drains, canals, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer or drain.

(2) References in this Order to rights over land include references to rights to do, or to place and maintain, anything in, on or under land or in the air-space above its surface and references in this Order to the imposition of restrictive covenants are references to the creation of rights over land which interfere with the interests or rights of another and are for the benefit of land which is acquired under this Order or is otherwise comprised in Network Rail's railway undertaking.

(3) References in this Order to numbered plots are references to plot numbers on the deposited plans.

(4) All distances, directions and lengths referred to in this Order are approximate and distances between points on a scheduled work are taken to be measured along the scheduled work.

(5) References in this Order to points by letters, or letters and numbers are construed as references to points on the deposited plans.

Incorporation of the Railway Clauses Acts

3.—(1) The following provisions of the Railways Clauses Consolidation Act 1845(**12**) are incorporated in this Order—

section 58(**13**) (company to repair roads used by them), except for the words from "and if any question" to the end;

section 61 (company to make sufficient approaches and fences to highways crossing on the level);

section 68 (accommodation works by company);

section 71 (additional accommodation works by owners), except for the words "or directed by such justices to be made by the company" and "or, in case of difference, as shall be authorised by two justices";

section 72 and 73 (supplementary provisions relating to accommodation works);

section 75(**14**) (omission to fasten gates);

section 77 (presumption that minerals excepted from acquisition of land);

(**11**) 1981 c. 67. The definition of "owner" was amended by paragraph 9 of Schedule 15 to the Planning and Compensation Act 1991 (c. 34). There are other amendments to section 7 which are not relevant to this Order.
(**12**) 1845 c. 20.
(**13**) Section 58 was amended by section 46 of, and part 3 of Schedule 7 to, the Justices of the Peace Act 1949 (c. 101).
(**14**) Section 75 was amended by section 49 of the Transport and Works Act 1992 (c. 42).

sections 78 to 85E(**15**) and Schedules 1 to 3 (minerals under railways), as respectively substituted and inserted by section 15 of the Mines (Working Facilities and Support) Act 1923(**16**);

section 103(**17**) (refusal to quit carriage at destination);

section 105 (carriage of dangerous goods on railway), except for the words from "and if any person" to "for every such offence"; and

section 145(**18**) (recovery of penalties).

(2) Section 12 (signals, watchmen etc.) of the Railways Clauses Act 1863(**19**) is incorporated in this Order.

(3) In those provisions, as incorporated in this Order—

"the company" means Network Rail;

"goods" includes any thing conveyed on the railway authorised to be constructed by this Order;

"lease" includes an agreement for a lease;

"prescribed", in relation to any such provision means prescribed by this Order for the purposes of that provision;

"the railway" means any railway authorised to be constructed by this Order and any other authorised works;

"the special Act" means this Order; and

"toll" includes any rate or charge or other payment payable under this Order or any other enactment for any passenger or goods conveyed on any railway authorised to be constructed by this Order.

Application of the 1991 Act

4.—(1) Works executed under this Order in relation to a highway which consists of or includes a carriageway are treated for the purposes of Part 3 (street works in England and Wales) of the 1991 Act as major transport works if—

(a) they are of a description mentioned in any of paragraphs (a), (c) to (e), (g) and (h) of section 86(3) (which defines what highway authority works are major highway works) of that Act; or

(b) they are works which, had they been executed by the highway authority, might have been carried out in exercise of the powers conferred by section 64(**20**) (dual carriageways and roundabouts) of the 1980 Act.

(2) The following provisions of the 1991 Act do not apply in relation to any works executed under the powers conferred by this Order—

section 56 (directions as to timing);

section 56A (power to give directions as to placing of apparatus);

section 58 (restrictions following substantial road works);

(**15**) Section 84, as substituted, was amended by part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1982 (c. 48). Section 85C, as substituted, was amended by virtue of section 17(2)(a) of the Interpretation Act 1978 (c. 30).
(**16**) 1923 c. 20.
(**17**) Section 103 was amended by the Statute Law Revisions Act 1892 (c. 19), part 3 of Schedule 7 to the Justices of the Peace Act 1949 (c. 101) and section 46 of the Criminal Justice Act 1982 (c. 48).
(**18**) Section 145 was amended by the Statute Law Revision Act 1892 (c. 19) and part 2 of Schedule 12 to the Transport Act 1962 (c. 46).
(**19**) 1863 c. 92.
(**20**) As amended by section 102 of, and Schedule 17 to, the Local Government Act 1985 (c. 51) and section 168(2) of, and Schedule 9 to, the New Roads and Street Works Act 1991 (c. 22).

section 73A (power to require undertaker to re-surface street);

section 73B (power to specify timing, etc., of re-surfacing);

section 73C (materials, workmanship and standard of re-surfacing);

section 78A (contributions to costs of re-surfacing by undertaker); and

Schedule 3A (restriction on works following substantial street works).

(3) The provisions of the 1991 Act mentioned in paragraph (4), together with other provisions of that Act, which apply in relation to the execution of street works, and any regulations made or code of practice issued or approved under those provisions, apply (with the necessary modifications) in relation to any stopping up, alteration or diversion of a street of a temporary nature by Network Rail under the powers conferred by article 9 (temporary stopping up of streets) and to the carrying out of works under article 8 (power to execute street works), whether or not the stopping up, alteration or diversion, or the carrying out of such works, constitutes street works within the meaning of that Act.

(4) The provisions of the 1991 Act(**21**) referred to in paragraph (3) are—

section 54(**22**) (advance notice of certain works), subject to paragraph (5);

section 55(**23**) (notice of starting date of works), subject to paragraph (5);

section 57(**24**) (notice of emergency works);

section 59(**25**) (general duty of street authority to co-ordinate works);

section 60 (general duty of undertakers to co-operate);

section 68 (facilities to be afforded to street authority);

section 69 (works likely to affect other apparatus in the street);

section 76 (liability for cost of temporary traffic regulation);

section 77 (liability for cost of use of alternative route); and

all such other provisions as apply for the purposes of the provisions mentioned above.

(5) Sections 54 and 55 of the 1991 Act as applied by paragraph (3) have effect as if references in section 57 of that Act to emergency works were a reference to a stopping up, alteration or diversion (as the case may be) required in a case of emergency.

(6) Nothing in article 11 (construction and maintenance of altered streets)—

(a) prejudice the operation of section 87 (prospectively maintainable highways) of the 1991 Act, and Network Rail is not by reason of any duty under that article to maintain a street to be taken to be a street authority in relation to that street for the purposes of Part 3 of that Act; or

(b) has effect in relation to street works with regard to which the provisions of Part 3 of the 1991 Act apply.

Disapplication of legislative provisions

5.—(1) The following provisions do not apply in relation to any works executed under the powers conferred by this Order—

(**21**) Sections 54, 55, 57, 60, 68 and 69 were amended by section 40(1) and (2) of, and Schedule 1 to, the Traffic Management Act 2004 (c. 18).
(**22**) As also amended by section 49(1) of the Traffic Management Act 2004.
(**23**) As also amended by section 49(2) and 51(9) of the Traffic Management Act 2004.
(**24**) As also amended by section 52(3) of the Traffic Management Act 2004.
(**25**) As amended by section 42 of the Traffic Management Act 2004.