

## SCHEDULES

### SCHEDULE 7

Article 32

#### PROVISIONS FOR THE PROTECTION OF NETWORK RAIL

1.—(1) The following provisions of this Schedule shall have effect subject to the provisions of article 31 or to any agreement under or in pursuance of that article or any access contract, or unless otherwise agreed in writing between the undertaker and Network Rail.

(2) In this Schedule—

“access contract” means an access contract within the meaning of section 17 of the Railways Act 1993 between the undertaker and Network Rail;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer to be appointed by Network Rail for the purpose in question;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals and programmes;

“railway property” means any railway belonging to Network Rail and any works, apparatus and equipment belonging to Network Rail connected with any such railway and includes any land held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“identified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

2.—(1) The undertaker shall not under the powers conferred by this Order acquire or use or acquire new rights over any railway property unless such acquisition or use is with the consent of Network Rail.

(2) Where so required by the engineer, the undertaker shall, to the reasonable satisfaction of the engineer, fence off (whether on a temporary or permanent basis or both) any part of any identified work from railway property.

(3) The undertaker shall not exercise the powers conferred by article 11 or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(4) The undertaker shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(5) The provisions of article 20 shall not apply to any right of access of Network Rail to railway property but such right of access may be diverted with the consent of Network Rail.

(6) Where Network Rail is asked to give its consent pursuant to sub-paragraphs (1), (3), (4), or (5), such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

3.—(1) The undertaker shall, before commencing construction of any identified work, supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer

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and shall not commence such construction of the identified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of an identified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the identified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying his approval of the plans, the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of construction of an identified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by an identified work), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by the undertaker, if Network Rail so desires, with all reasonable dispatch and the undertaker shall not commence the construction of the identified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

4. Any identified work shall, when commenced, be constructed—
  - (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 3;
  - (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
  - (c) in such manner as to cause as little damage as is possible to railway property; and as little interference as may be reasonably practicable with the conduct of traffic on the railways of Network Rail,

and, if any damage to railway property or any such interference or obstruction is caused by the carrying out of an identified work, the undertaker shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

5. The undertaker shall—
  - (a) at all times afford reasonable facilities to the engineer for access to an identified work during its construction; and
  - (b) supply the engineer with all such information as he may reasonably require with regard to an identified work or the method of constructing it.

6. Network Rail shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

7.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of an identified work, or during a period of 12 months after the commencement of regular revenue-earning train operations using the new railways comprised in the identified works, in consequence of the construction of an identified work, and Network Rail gives to the undertaker reasonable notice of its intention specifying the alterations or additions to be carried out the undertaker shall pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 8(a), provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Network Rail under this paragraph.

8. The undertaker shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of the identified works on behalf of the undertaker as provided by paragraph 3(3) or in constructing any protective works under the provisions of paragraph 3(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works; and
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by their engineer of the construction of an identified work.

9.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised works (including the operation of trains using the new railways comprised in the works) where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the works) which are owned or used, by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 3(1) for the relevant part of the authorised works giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker shall, in the design and construction of the authorised works, take all measures necessary to prevent EMI and shall establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker shall consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter shall continue to consult with Network Rail (both before and after formal submission of plans under paragraph 3(1)) to identify all potential causes of EMI and the measures required to eliminate them;

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- (b) Network Rail shall make available to the undertaker all information in Network Rail's possession reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to paragraph (a);
- (c) Network Rail shall allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail shall not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution shall be selected in Network Rail's reasonable discretion and in relation to such modifications paragraph 3(1) shall have effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning train operations on the new railways comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the undertaker shall immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred:—

- (a) the undertaker shall afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail shall afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail shall make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6):—

- (a) Network Rail shall allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the undertaker in accordance with paragraph 4.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 14(1) shall apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 8(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 29 to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

**10.** If at any time after the completion of an identified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of an identified work appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put the identified work in such state of maintenance as not adversely to affect railway property.

**11.** The undertaker shall not provide any illumination or illuminated sign or signal on or in connection with an identified work in the vicinity of any railway belonging to Network Rail unless it shall have first consulted Network Rail and it shall comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

**12.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of an identified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

**13.—(1)** The undertaker shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of an identified work or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the identified work;

and the undertaker shall indemnify Network Rail from and against all claims and demands arising out of or in connection with an identified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence or default on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) Any liability of the undertaker under this paragraph or under any other paragraph of this schedule shall be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the neglect or default of Network Rail or of any person in its employ, or of its contractors or agents.

(4) The sums payable by the undertaker under sub-paragraph (1) shall include a sum equivalent to the relevant costs.

(5) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(6) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(7) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of the identified works or any such act or omission as mentioned in sub-paragraph (1).

**14.** In the assessment of any sums payable to Network Rail under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any

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agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.

**15.** The provisions of Schedule 6 to this Order shall not apply for the purposes of this Order as respects any rights or apparatus vested in or belonging to Network Rail or as respects any street under the control or management of, or maintainable by, or forming part of a level crossing belonging to, Network Rail or its lessees.

**16.** Nothing in this Schedule shall impose any liability on the undertaker with respect to any damage, cost, expense or loss which is attributable to the neglect or default of Network Rail or its servants or agents.