

# SCHEDULES

## SCHEDULE 6

### PROTECTIVE PROVISIONS

#### PART II

#### PROTECTION FOR RAILTRACK PLC

##### *Interpretation*

**1.** In this Part of this Schedule—

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

“the engineer” means an engineer appointed by Railtrack PLC for the purpose in question;

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

“Railtrack” means Railtrack PLC and any associated company of Railtrack PLC which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985<sup>(1)</sup>) the holding company of Railtrack PLC, a subsidiary of Railtrack PLC or another subsidiary of the holding company of Railtrack PLC;

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

“specified 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.

##### *Powers requiring consent of Railtrack PLC*

**2.—(1)** The Council 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 Railtrack PLC.

(2) The Council shall not exercise the powers conferred by article 13 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 Railtrack PLC.

(3) The Council 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 Railtrack PLC.

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(1) 1985 c. 6.

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(4) The Council shall not exercise the powers conferred by section 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 5 to this Order, in relation to any right of access of Railtrack to railway property, but such right of access may be diverted with the consent of Railtrack PLC.

(5) Where Railtrack PLC is asked to give its consent pursuant to sub-paragraph (1), (2), (3) or (4) such consent shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

### *Fencing*

3. Where so required by the engineer the Council shall to the reasonable satisfaction of the engineer fence off any specified work or take such other steps as the engineer may require to be taken for the purpose of separating that work from railway property, whether on a temporary or permanent basis or both.

### *Approval of plans*

4.—(1) The Council shall before commencing construction of any specified work supply to Railtrack PLC proper and sufficient plans of that work for the reasonable approval of the engineer and shall not commence such construction of the specified 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 within 56 days after such plans have been supplied to Railtrack PLC 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 within 56 days after such plans have been supplied to Railtrack PLC, Railtrack PLC gives notice to the Council that Railtrack PLC desires itself to construct any part of the specified 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 Railtrack PLC then, if the Council desires such part of the specified work to be constructed, Railtrack PLC shall construct it (together with any adjoining part of the specified work which the Council reasonably requires to be constructed in one operation with those works) with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Council in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (where appropriate and if given) of the Council.

(4) Upon 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 a specified work to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Railtrack PLC or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work), and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack PLC or by the Council, if Railtrack PLC so desires, with all reasonable dispatch and the Council shall not commence the construction of the specified work until the engineer has notified the Council that the protective works have been completed to his reasonable satisfaction.

(a) (5) (a) For the avoidance of doubt, and subject to sub-paragraph (b), the protective works which the engineer may specify upon signifying his approval of plans of such of the specified works as are within 15 metres of, or may in any way adversely affect, the existing Ballast Sidings at Chester North Junction belonging to Railtrack may include works for the relocation of those sidings on land made available to the Council by Railtrack.

- (b) The Council shall not be obliged to relocate the sidings referred to in sub-paragraph (a) unless the land required for the purpose has been made available by Railtrack.
- (c) The work required to relocate the sidings shall be carried out by the Council as agent for Railtrack, and Railtrack shall own the relocated sidings when constructed.

#### *Construction of specified works*

5.—(1) Any specified work (together with any protective works specified by the engineer pursuant to paragraph 4(4)) shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid;
- (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
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Railtrack PLC or the traffic thereon;

and, if any damage to railway property or any such interference or obstruction is caused or takes place in consequence of the construction of a specified work, the Council shall, notwithstanding any such approval, make good such damage and shall pay to Railtrack PLC all reasonable expenses to which Railtrack may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(2) Nothing in this paragraph shall impose any liability on the Council with respect to any damage, costs, expenses or loss attributable to the negligence of Railtrack or its servants, contractors or agents.

#### *Access*

6. The Council shall—

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

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

#### *Alterations, etc. to railway property*

8.—(1) If during the construction of a specified work or during a period of 12 months after the completion of that work any alterations or additions, either permanent or temporary, to railway property are reasonably necessary in consequence of the construction of a specified work in order to ensure the safety of railway property or the continued safe and efficient operation of the railways of Railtrack PLC, and Railtrack PLC gives to the Council reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the Council shall pay to Railtrack PLC the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions.

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(2) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 9(a), provide such details of the formula by which those sums have been calculated as the Council 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 Council to Railtrack PLC under this paragraph.

*Repayment of Railtrack's fees etc.*

9. The Council shall repay to Railtrack PLC all reasonable fees, costs, charges and expenses reasonably incurred by Railtrack—

- (a) in constructing any part of a specified work on behalf of the Council as provided by paragraph 4(3) or in constructing any protective works under the provisions of paragraph 4(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 Council and the supervision by him of the construction of a specified work and any protective works.

*Maintenance of specified works*

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

*Illuminated signs etc.*

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

*Alterations, etc. to railway property : repayment of additional expenses*

12. Any additional expenses which Railtrack 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 a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Council, be repaid by the Council to Railtrack PLC.

*Indemnity*

13.—(1) The Council shall be responsible for and make good to Railtrack PLC all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Railtrack—

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

and the Council shall indemnify Railtrack from and against all claims and demands arising out of or in connection with any specified work or any such failure, act or omission as aforesaid; and the fact that any act or thing may have been done by Railtrack on behalf of the Council 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 on the part of Railtrack or of any person in its employ or of its contractors or agents) excuse the Council from any liability under the provisions of this paragraph.

(2) Railtrack PLC shall give the Council reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Council.

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

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

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

(6) In this paragraph—

“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 Railtrack’s rail network as a result of the construction, maintenance or failure of any specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**14.** In the assessment of any sums payable under this part of 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 agreement entered into by Railtrack 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 Council under this part of this Schedule or increasing the sums so payable.

**15.** The Council and Railtrack PLC may enter into, and carry into effect, agreements for the transfer to the Council of—

- (a) any railway property shown on the land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Railtrack PLC relating to any railway property.