

SCHEDULES

SCHEDULE 1

Articles 5 and 6

SCHEDULED WORKS

In the district of Huntingdonshire in the county of Cambridgeshire:—

Work No. 1—A railway 946.5 metres in length commencing at a point corresponding to Ordnance Survey grid reference 522569 (E) and 275930 (N) and running in an easterly and then northerly direction by cutting before terminating approximately 95 metres north of milepost 61¾ by a junction with the East Coast Main Line railway. At chainage 30 metres branching to form two sidings a total of 130 metres in length. At chainage 61 metres branching to form a siding of 292 metres in length. At chainage 879 metres branching to form a siding of 67 metres in length.

Work No. 2—A railway 1,334 metres in length commencing by a junction with Work No. 1, and running in a south-easterly and then southerly direction by cutting before terminating at a point approximately 14 metres south of milepost 61 by a junction with the East Coast Main Line railway. At chainage 1,274 metres branching to form a siding of 55 metres in length. An overbridge with a span of 10.5 metres and a width of 6 metres to carry a bridleway over the railway. An overbridge with a span of 35 metres to carry a re-routed public footpath over the railway. The extension of an existing culvert carrying a watercourse under the East Coast Main Line railway along the line of the watercourse by 15 metres.

Work No. 3—A railway 1,517.2 metres in length commencing by a junction with Work No. 2, and running in a south-easterly, then east-south-easterly and then southerly direction by part cutting and part embankment before terminating approximately 152 metres south of milepost 61 by a junction with the East Coast Main Line railway. At chainage 1,457 metres branching to form a siding of 55 metres in length. An overbridge with a span of 10.5 metres and a width of 6 metres to carry a bridleway over the railway. An overbridge with a span of 33.5 metres to carry the railway over the East Coast Main Line railway. The extension of an existing culvert carrying a watercourse under the East Coast Main Line railway along the line of the watercourse by 35 metres.

Work No. 4—A railway 1,062 metres in length commencing at a point corresponding to Ordnance Survey grid reference 522569 (E) and 275930 (N), the point of commencement for Work Nos. 1 and 5, and running in a north-westerly direction by cutting, forming sidings between chainages 25.4 and 1,062, before terminating at a point corresponding to Ordnance Survey grid reference 521569 (E) and 276294 (N). At chainage 1,062 metres branching to form a siding of 140 metres in length.

Work No. 5—A railway 1,887.6 metres in length, commencing at a point corresponding to Ordnance Survey grid reference 522569 (E) and 275930 (N), the point of commencement for Work Nos. 1 and 4, and running in an easterly and then north-westerly direction by part cutting and part embankment before terminating at a point corresponding to Ordnance Survey grid reference 521436 (E) and 276838 (N).

Work No. 6—A railway 813.5 metres in length commencing at the termination of Work No. 5, and running in a north-westerly direction by cutting, forming sidings between chainages 0 and 740 metres, before terminating at a point corresponding to Ordnance Survey grid reference 520684 (E) and 277149 (N).

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Work No. 7—A railway 324 metres in length commencing at a point approximately 52 metres north of milepost 62 by a junction with the East Coast Main Line railway and running in a north-north-westerly direction at grade before terminating 22 metres south of milepost 62¼ by a junction with the East Coast Main Line railway.

SCHEDULE 2

Articles 5 and 13

ACQUISITION OF CERTAIN LAND

(1) <i>Area</i>	(2) <i>Description of land shown on land plan</i>	(3) <i>Purpose for which land may be acquired</i>
District of Huntingdonshire	AREA 1	The construction of the railway connections to Alconbury Airfield from the East Coast Main Line and the provision of associated sidings, bridges and the extension of the culvert to an existing watercourse.
District of Huntingdonshire	AREA 2	The provision of mitigation measures involving habitat creation and enhancement.
District of Huntingdonshire	AREA 6	The construction of part of the railway connections to Alconbury Airfield from the East Coast Main Line.
District of Huntingdonshire	AREA 7	The construction of part of the railway connections to Alconbury Airfield from the East Coast Main Line and the provision of an associated bridge to carry the railway.

SCHEDULE 3

Articles 7 and 8

PART 1

SCHEDULE OF STREET WORKS

(1) <i>Area</i>	(2) <i>Street subject to street works</i>
District of Huntingdonshire	Footpath 11 and Bridleway 10

PART 2

STREETS SUBJECT TO PERMANENT CLOSURE AND DIVERSION

(1) <i>Right of Way</i>	(2) <i>Extent of closure</i>	(3) <i>Permanent diversion</i>
Footpath 11	155 metres between Ordnance Survey grid reference 523437 (E) 275448 (N) and 523430 (E) 275588 (N)	181 metres between Ordnance Survey grid reference 523437 (E) 275448 (N) and 523430 (E) 275588 (N)

PART 3

STREETS SUBJECT TO TEMPORARY CLOSURE AND DIVERSION

(1) <i>Right of Way</i>	(2) <i>Extent of closure</i>	(3) <i>Temporary diversion</i>
Bridleway 10	140 metres between Ordnance Survey grid reference 523114 (E) 275661 (N) and 523220 (E) 275707 (N)	121 metres between Ordnance Survey grid reference 523114 (E) 275661 (N) and 523220 (E) 275707 (N)
Footpath 11	245 metres between Ordnance Survey grid reference 523437 (E) 275448 (N) and 523396 (E) 275671 (N)	625 metres between Ordnance Survey grid reference 523437 (E) 275448 (N) and 523396 (E) 275671 (N)

SCHEDULE 4

Article 15

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1, the Land Compensation Act 1973(1) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”, and

(1) 1973 c. 26.

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(b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted in paragraph 5—

(a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over land consisting”,

(b) for the word “severance” there shall be substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”,

(c) for the words “part proposed” there shall be substituted the words “right proposed”, and

(d) for the words “part is” there shall be substituted the words “right is”.

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

(a) the right acquired or to be acquired, or

(b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1), Part I of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“**7.** In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following—

“**8.—(1)** Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

(a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (“the tribunal”); and

(b) before the tribunal has determined that question the person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—

(i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land, or

(ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Alconbury Airfield (Rail Facilities and Connection to East Coast Main Line) Order 2003 (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey),
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity),
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners), and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority’s possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

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SCHEDULE 5

Articles 16 and 17

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

(1) <i>Area</i>	(2) <i>Description of land shown on land plan</i>	(3) <i>Purpose for which temporary possession may be taken</i>	(4) <i>Authorised work</i>
District of Huntingdonshire	AREA 4	Access for construction work and for work site	Work Nos. 2 and 3
District of Huntingdonshire	AREA 5	Access for construction work and for maintenance purposes	Work Nos. 2 and 3

SCHEDULE 6

Articles 7, 8 and 25

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

1.—(1) Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by the undertaker under this Order subject to the following provisions of this paragraph; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) shall not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer, or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) In this paragraph:—

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“the 1990 Act” means the Town and Country Planning Act 1990(2),

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(3), and

“public utility undertakers” has the same meaning as in the Highways Act 1980(4).

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under article 8 of this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 8 of this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street may and, if reasonably requested so to do by the undertaker, shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the utility may reasonably determine and have power to place it, or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as aforesaid.

(3) Subject to the following provisions of this paragraph, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of relocation works required in consequence of the stopping up of the street, and
- (b) the doing of any other work or thing rendered necessary by the execution of relocation works.

(4) If in the course of the execution of relocation works under sub-paragraph (2)—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) shall be reduced by the amount of that excess.

(5) For the purposes of sub-paragraph (4)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus, and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(2) 1990 c. 8.

(3) 2003 c. 21.

(4) 1980 c. 66.

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(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on the utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works) and dated June 1992 and approved by the Secretary of State on 30 June 1992.

(7) Sub-paragraphs (3) to (6) shall not apply where the authorised works constitute major transport works for the purposes of Part III of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section, and
- (b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this paragraph—

“apparatus” has the same meaning as in Part III of the 1991 Act;

“relocation works” means works executed, or apparatus provided, under sub-paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or a public communications provider as defined in paragraph 1(5).

Railway and navigation undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers under article 7 of this Order to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the Highways Act 1980)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority, or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Sub-paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part III of the 1991 Act.

(3) A consent given for the purposes of sub-paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.

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 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.

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(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;
- (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

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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 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.

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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.

SCHEDULE 8

Article 33

PROVISIONS FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1.—(1) The following provisions shall apply for the protection of the Environment Agency unless otherwise agreed in writing between the undertaker and the Environment Agency.

(2) In this Schedule—

“damage” shall include scouring, erosion and environmental damage and “damaged” shall be construed accordingly;

“construction” shall include execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” shall be construed accordingly;

“drainage work” shall mean any watercourse and includes any land which is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

“the fishery” shall mean any waters containing fish and fish in, or migrating to or from such waters and the spawn, habitat or food of such fish;

“plans” shall include sections, drawings, specifications and method statements;

“specified work” shall mean so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a watercourse or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources; and

“watercourse” shall include all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer.

2.—(1) Before beginning to construct any specified work, the undertaker shall submit to the Environment Agency plans of the work and such further particulars available to it as the Environment Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Environment Agency, or determined under paragraph 12.

(3) Any approval of the Environment Agency required under this paragraph—

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused in writing within two months of the submission of the plans for approval and in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the Environment Agency may make for the protection of any drainage work or fishery or for the protection of water

resources, or for the prevention of flooding or pollution and in the discharge of its environmental and recreational duties.

3. Without prejudice to the generality of paragraph 2, the requirements which the Environment Agency may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage, or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work.

4.—(1) Any specified work, and all protective works required by the Environment Agency under paragraph 2 shall be constructed—

- (a) with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (b) to the reasonable satisfaction of the Environment Agency,

and the Environment Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker shall give to the Environment Agency not less than fourteen days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than seven days after the date on which it is brought into use.

(3) If any part of the works comprising a structure in, over or under a drainage work is constructed otherwise than in accordance with the requirements of this Schedule, the Environment Agency may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Schedule or (if the undertaker so elects and the Environment Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Environment Agency reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and thereafter to make reasonably expeditious progress towards their implementation, the Environment Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which a notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Environment Agency shall not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

5.—(1) The undertaker shall from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation or on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of the Order or is already in existence.

(2) If any such work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Environment Agency, the Environment Agency may by notice in writing require the undertaker to repair and restore the work, or any part thereof, or (if the undertaker so elects and the Environment Agency in writing consents, such consent not to be unreasonably withheld), to

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remove the work and restore the site to its former condition, to such extent and within such limits as the Environment Agency reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter made reasonably expeditious progress towards their implementation, the Environment Agency may do anything necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from that person.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (3), the Environment Agency shall not, except in a case of an emergency, exercise the powers of sub-paragraph (3) until the dispute has been finally determined.

6. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that work is otherwise damaged, such impairment or damage shall be made good by the undertaker to the reasonable satisfaction of the Environment Agency and if the undertaker fails to do so, the Environment Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in so doing.

7.—(1) The undertaker shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in any fishery during the construction of any specified work.

(2) If by reason of—

- (i) the construction of any specified work, or
- (ii) the failure of any such work,

damage to the fishery is caused, or the Environment Agency has reason to expect that such damage may be caused, the Environment Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If, within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Environment Agency of any damage or expected damage to the fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Environment Agency may take those steps and may recover from the undertaker the expense reasonably incurred by it in doing so.

(4) In any case where immediate action by the Environment Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Environment Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker the reasonable cost of so doing provided that a notice specifying those steps is served on the undertaker as soon as is reasonably practicable after the Environment Agency has taken, or commenced to take, the steps specified in the notice.

8. The undertaker shall indemnify the Environment Agency in respect of all costs, charges and expenses which the Environment Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Environment Agency under this Schedule.

9.—(1) Without prejudice to the other provisions of this Schedule, the undertaker shall indemnify the Environment Agency from all claims, demands, proceedings, costs, damages or expenses or loss,

which may be made or taken against, or recovered from or incurred by the Environment Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence,
- (b) any damage to the fishery,
- (c) any raising or lowering of the water table in land adjoining the works authorised by this Order or any sewers, drains and watercourses,
- (d) any flooding or increased flooding of any such lands, or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by, or results from, the construction of any of the works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) The Environment Agency shall give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the undertaker which agreement shall not be unreasonably withheld.

10. The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Environment Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the undertaker from any liability under the provisions of this Schedule.

11. For the purposes of Chapter II of Part II of the Water Resources Act 1991⁽⁵⁾ (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Environment Agency under this Schedule with respect to such construction shall be deemed also to constitute an impounding licence under that Chapter or, as the case may be, approval under that section, and the undertaker shall not be obliged to serve any notice which would otherwise be required by section 30 of the said Act of 1991 (which relates to the construction of boreholes and similar works in respect of which a licence is not required).

12. Any dispute arising between the undertaker and the Environment Agency under this Schedule (other than a difference as to its meaning or construction) shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by the undertaker or the Environment Agency, after notice in writing by one to the other.

(5) 1991 c. 57.