

SCHEDULES

SCHEDULE 10

PROTECTION OF CERTAIN PERSONS

PART 6

PROTECTION OF NETWORK RAIL INFRASTRUCTURE LTD

Interpretation

61. 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 Network Rail Infrastructure Ltd for the purpose in question;

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

“NRI” means Network Rail Infrastructure Ltd;

“Network Rail” means NRI and any associated company of NRI 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⁽¹⁾) the holding company of NRI, a subsidiary of NRI or another subsidiary of the holding company of NRI;

“railway property” means any railway belonging to NRI 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

“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 NRI

62.—(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 NRI.

(2) The undertaker shall not exercise the powers conferred by article 16 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 NRI.

(1) 1985 c. 6.

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(3) 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 NRI.

(4) The undertaker shall not exercise the powers conferred by section 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 11 to this Order, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of NRI.

(5) Where NRI 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

63. Where so required by the engineer the undertaker shall to the reasonable satisfaction of the engineer fence off any specified work or take such other steps as the engineer may reasonably 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

64.—(1) The undertaker shall before commencing construction of any specified work supply to NRI 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 NRI 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 NRI, NRI gives notice to the undertaker that NRI 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 NRI then, if the undertaker desires such part of the specified work to be constructed, NRI shall construct it (together with any adjoining part of the specified work which the undertaker 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 undertaker 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 undertaker.

(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 NRI 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 NRI or by the undertaker, if NRI so desires, with all reasonable dispatch and the undertaker shall not commence the construction of the specified work until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

(5) In the event of NRI not constructing or completing any part of a specified work pursuant to paragraph (3) with all reasonable dispatch and to the reasonable satisfaction of the undertaker in accordance with such programme as may be agreed with the undertaker or settled by arbitration, NRI shall pay compensation to the undertaker for any loss which it may sustain as a result.

Construction of specified works

65.—(1) Any specified work (together with any protective works specified by the engineer pursuant to paragraph 64(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 NRI 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 undertaker shall, notwithstanding any such approval, make good such damage and shall pay to NRI 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.

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

Access

66. The undertaker 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.

67. NRI shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by NRI under this Part of 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.

Alterations, etc. to railway property

68.—(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 NRI, and NRI gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to NRI 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 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 69(a), provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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(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 NRI under this paragraph.

Repayment of Network Rail's fees etc.

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

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 64(3) or in constructing any protective works under the provisions of paragraph 64(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 him of the construction of a specified work and any protective works.

Maintenance of specified works

70. If at any time after the completion of a specified work, not being a work vested in Network Rail, NRI gives notice to the undertaker informing it that the state of maintenance of the specified 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 specified work in such state of maintenance as not adversely to affect the operation of railway property.

Illuminated signs etc.

71. The undertaker shall not provide any illumination or illuminated sign on or in connection with a specified work in the vicinity of any railway belonging to NRI unless it shall have first consulted NRI and it shall comply with NRI'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

72. 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 a specified 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 NRI.

Indemnity

73.—(1) The undertaker shall be responsible for and make good to NRI 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 Network Rail—

- (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 undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the undertaker shall indemnify Network Rail 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 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 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 paragraph.

(2) NRI shall give the undertaker 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 undertaker.

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

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

(5) The obligation under sub-paragraph (3) to pay NRI 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 Network Rail’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⁽²⁾.

74. 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 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 part of this Schedule or increasing the sums so payable.

75. The undertaker and NRI may enter into, and carry into effect, agreements for the transfer to the undertaker 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 NRI relating to any railway property.

(2) 1993 c. 43.