

SCHEDULES

SCHEDULE 14

Articles 74 and 88

FOR PROTECTION OF RAILWAY INTERESTS

1. The following provisions shall have effect, unless otherwise agreed in writing between the promoter and Network Rail Infrastructure Limited and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

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

“DBSR” means DB Schenker Rail (UK) Limited and includes its successors from time to time;

“EMTL” means East Midlands Trains Limited or (where the context permits) its successors as station facility owner (as defined in the Railways Act 1993(1)) in relation to Network Rail Infrastructure Limited’s existing station known as Nottingham Station;

“the engineer” means an engineer appointed by Network Rail Infrastructure Limited for the purposes of this Order;

“Freightliner” means Freightliner Group Limited and includes its successors from time to time;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of the powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited 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(2)) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“Network Rail Infrastructure Limited” means Network Rail Infrastructure Limited, a company limited by shares and incorporated under the Companies Act 1985, whose registered number is 02904587;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(1) 1993 c. 43.

(2) 1985 c. 6.

Status: This is the original version (as it was originally made).

- (b) any easement or other property interest held by or used for the benefit of Network Rail Infrastructure Limited 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.

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, DBSR, EMTL, Freightliner and Network Rail Infrastructure Limited shall—

- (a) co-operate with the promoter with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

4.—(1) The promoter shall not exercise the powers conferred by article 25 (power to survey and investigate land, etc.) 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 Infrastructure Limited.

(2) The promoter 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 Infrastructure Limited.

(3) The promoter shall not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 11 (provisions relating to statutory undertakers, etc.), in relation to any right of access of Network Rail Infrastructure Limited to railway property, but such right of access may be diverted with the consent of Network Rail Infrastructure Limited.

(4) The promoter shall not under the powers conferred by this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail Infrastructure Limited.

(5) Where Network Rail Infrastructure Limited is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The promoter shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as 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, 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 Infrastructure Limited the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer 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 Infrastructure Limited, Network Rail Infrastructure Limited gives notice to the promoter that Network Rail Infrastructure Limited desires itself to construct any part of a 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 Network Rail Infrastructure Limited then, if the promoter desires such part of the specified work to be constructed, Network Rail Infrastructure Limited shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the promoter in accordance with the plans approved or deemed to be approved or settled under this paragraph.

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

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(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 under paragraph 5;
- (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 Network Rail Infrastructure Limited or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the promoter shall, regardless of any such approval, make good such damage and shall pay to Network Rail Infrastructure Limited all reasonable expenses to which Network Rail Infrastructure Limited may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose any liability on the promoter with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail Infrastructure Limited or its servants, contractors or agents or any liability on Network Rail Infrastructure Limited with respect to any damage, costs, expenses or loss attributable to the negligence of the promoter or its servants, contractors or agents.

7. The promoter 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 the engineer may reasonably require with regard to a specified work or the method of constructing it.

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

Status: This is the original version (as it was originally made).

9.—(1) If any permanent or temporary alterations or additions to railway property, or any protective works under paragraph 5(4), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the commencement of regular revenue-earning operations on the authorised tramway comprised in any specified work, in consequence of the construction of a specified work, such alterations and additions may be carried out by Network Rail Infrastructure Limited and if Network Rail Infrastructure Limited gives to the promoter reasonable notice of its intention to carry out such alterations or additions, the promoter shall pay to Network Rail Infrastructure Limited 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 Infrastructure Limited in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the promoter, Network Rail Infrastructure Limited gives notice to the promoter that Network Rail Infrastructure Limited desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail Infrastructure Limited then, if the promoter desires that part of the specified work to be constructed, Network Rail Infrastructure Limited shall assume construction of that part of the specified work and the promoter shall, regardless of any such approval of a specified work under paragraph 5(1), pay to Network Rail Infrastructure Limited all reasonable expenses to which Network Rail Infrastructure Limited may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail Infrastructure Limited of that specified work.

(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 promoter to Network Rail Infrastructure Limited under this paragraph.

10. The promoter shall repay to Network Rail Infrastructure Limited all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail Infrastructure Limited—

- (a) in constructing any part of a specified work on behalf of the promoter as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the promoter and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(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 tramcars using the tramway 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 authorised works) which are owned or used by Network Rail Infrastructure Limited 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 5(1) for the relevant part of the authorised works giving rise to EMI (unless the promoter 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 promoter shall in the design and construction of the authorised works take all measures necessary to prevent EMI and shall establish with Network Rail Infrastructure Limited (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

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

- (a) the promoter shall consult with Network Rail Infrastructure Limited 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 Infrastructure Limited (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail Infrastructure Limited shall make available to the promoter all information in the possession of Network Rail Infrastructure Limited reasonably requested by the promoter in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail Infrastructure Limited shall allow the promoter reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-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 Infrastructure Limited 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 the reasonable discretion of Network Rail Infrastructure Limited, and in relation to such modifications paragraph 5(1) shall have effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning operations on the authorised tramway comprised in the authorised works and regardless of any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the promoter shall immediately upon receipt of notification by Network Rail Infrastructure Limited 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 promoter’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 promoter shall afford reasonable facilities to Network Rail Infrastructure Limited for access to the promoter’s apparatus in the investigation of such EMI;
- (b) Network Rail Infrastructure Limited shall afford reasonable facilities to the promoter for access to Network Rail’s apparatus in the investigation of such EMI; and
- (c) Network Rail Infrastructure Limited shall make available to the promoter any additional material information in its possession reasonably requested by the promoter in respect of Network Rail’s apparatus or such EMI.

Status: This is the original version (as it was originally made).

(8) Where Network Rail Infrastructure Limited approves modifications to Network Rail's apparatus pursuant to sub-paragraph (5) or (6)—

- (a) Network Rail Infrastructure Limited shall allow the promoter reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the promoter in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) shall apply to the costs and expenses reasonably incurred or losses suffered by Network Rail Infrastructure Limited 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 10(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 82 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

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

13. The promoter shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail Infrastructure Limited unless it shall have first consulted Network Rail Infrastructure Limited and it shall comply with Network Rail Infrastructure Limited'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.

14. Any additional expenses which Network Rail Infrastructure Limited 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 promoter, be repaid by the promoter to Network Rail Infrastructure Limited.

15.—(1) The promoter shall pay to Network Rail Infrastructure Limited 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 a specified work or the failure of such a work; or
- (b) by reason of any act or omission of the promoter or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

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

(2) Network Rail Infrastructure Limited shall give the promoter 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 promoter.

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

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

(5) The obligation under sub-paragraph (3) to pay Network Rail Infrastructure Limited 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).

(6) 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 Infrastructure Limited’s railway network as a result of the construction, maintenance or failure of a 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⁽³⁾.

16. Network Rail Infrastructure Limited shall, on receipt of a request from the promoter, from time to time provide the promoter free of charge with written estimates of the costs, charges, expenses and other liabilities for which the promoter is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the promoter to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

17. 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 promoter under this Schedule or increasing the sums so payable.

18. The promoter and Network Rail Infrastructure Limited may, subject in the case of Network Rail Infrastructure Limited to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the promoter of—

- (a) any railway property shown on the works and 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 Network Rail Infrastructure Limited relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall affect the operation of Part 1 of the Railways Act 1993.

20. The promoter shall give written notice to Network Rail if any application is proposed to be made by the promoter for the Secretary of State’s consent under article 55 (powers of disposal,

(3) 1993 c. 43.

Status: This is the original version (as it was originally made).

agreements for operation, etc.) and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application will relate; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The promoter shall, no later than 28 days from the date that the plans submitted to the Secretary of State are certified in accordance with article 79 (certification of plans, etc.), provide a set of those plans to Network Rail Infrastructure Limited in the form of a computer disc with read only memory.