

SCHEDULES

SCHEDULE 8

PROTECTIVE PROVISIONS

PART 3

FOR THE PROTECTION OF RAILWAY INTERESTS

33.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development 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 development) 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 applies 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 27(1) for the relevant part of the authorised development giving rise to EMI (unless the Secretary of State 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 Secretary of State must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

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

(a) the Secretary of State must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 27(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the Secretary of State all information in the possession of Network Rail reasonably requested by the Secretary of State in respect of Network Rail’s apparatus identified under sub-paragraph (a); and

(c) Network Rail must allow the Secretary of State reasonable facilities for the inspection of Network Rail’s apparatus identified under 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 must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution may be selected at the reasonable discretion of Network Rail, and in relation to such modifications paragraph 27(1) has effect subject to this sub-paragraph.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(6) If at any time prior to the completion of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the Secretary of State must 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) cease to use (or procure the cessation of use of) the Secretary of State'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 Secretary of State must afford reasonable facilities to Network Rail for access to the Secretary of State's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the Secretary of State for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the Secretary of State any additional material information in its possession reasonably requested by the Secretary of State in respect of Network Rail's apparatus or such EMI.

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

- (a) Network Rail must allow the Secretary of State reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the Secretary of State in accordance with paragraph 28.

(9) To the extent that it would not otherwise do so, paragraph 37(1) is to 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 32(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 40 (arbitration) to a single arbitrator to be agreed between the parties is to be read as a reference to an arbitrator being a member of the Institution of Electrical Engineers to be agreed.