

## SCHEDULES

### SCHEDULE 8

#### PROTECTIVE PROVISIONS

#### PART 3

#### FOR THE PROTECTION OF RAILWAY INTERESTS

**23.** The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Secretary of State and Network Rail and, in the case of paragraph 37, any other person on whom rights or obligations are conferred by that paragraph.

**24.** 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 for the purposes of this Order;

“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 powers under section 8 of the Railways Act 1993(1);

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes within the Order limits, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006(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;

“plans” includes sections, designs, design data, software, 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(3)) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited within the Order limits and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

---

(1) 1993 c. 43.

(2) 2006 c. 46.

(3) 1993 c. 43.

*Status: This is the original version (as it was originally made).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

“specified work” means so much of any of the authorised development as is to be situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

**25.—**(1) Where under this Part of this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement 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 or rights over railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the Secretary of State 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 its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

**26.—**(1) The Secretary of State must not exercise the powers conferred by articles 18 (authority to survey and investigate land), 19 (compulsory acquisition of land), 22 (compulsory acquisition of rights), 23 (private rights over land), 25 (acquisition of subsoil or air-space only), 27 (rights under or over streets), 28 (temporary use of land for carrying out the authorised development), 29 (temporary use of land for maintaining the authorised development), 30 (statutory undertakers) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Secretary of State must 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.

(3) The Secretary of State must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of telecommunications code system operators: preliminary notices) of the 1990 Act, or article 30, 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 Network Rail.

(4) The Secretary of State must not under the powers of this Order acquire or use, or acquire new rights over, any railway property except with the consent of Network Rail.

(5) Prior to commencement of construction of the authorised development the Secretary of State and Network Rail must, having regard to the Secretary of State’s timetable for development, agree in writing a programme for the implementation of Work No. 29 and the Secretary of State must then comply with the provisions of the programme.

(6) Where Network Rail is asked to give its consent or agreement under this paragraph, such consent or agreement must not be unreasonably withheld but may be given subject to reasonable conditions.

**27.—**(1) The Secretary of State must, 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 must 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) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the Secretary of State may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon

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

which the engineer receives written notice from the Secretary of State. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the Secretary of State that Network Rail 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 then, if the Secretary of State desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Secretary of State 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 Secretary of State.

(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 or the services of operators using the same (including any relocation de-commissioning and removal 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 must be constructed by Network Rail or by the Secretary of State, if Network Rail so desires, and such protective works must be carried out at the expense of the Secretary of State in either case with all reasonable dispatch and the Secretary of State must not commence the construction of the specified works until the engineer has notified the Secretary of State that the protective works have been completed to the Secretary of State's reasonable satisfaction.

**28.—**(1) Any specified work and any protective works to be constructed by virtue of paragraph 27(4) must, 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 27;
- (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 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 is caused by the carrying out of, or in consequence of the construction of a specified work, the Secretary of State must, regardless of any such approval, make good such damage and must 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.

(3) Nothing in this Part of this Schedule imposes any liability on the Secretary of State with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents, or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the Secretary of State or the Secretary of State's employees, contractors or agents.

**29.** The Secretary of State must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work or protective work during its construction; and

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

- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or protective work or the method of constructing it.

**30.** Network Rail must at all reasonable times afford reasonable facilities to the Secretary of State and the Secretary of State's agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the Secretary of State with such information as the Secretary of State may reasonably require with regard to such works or the method of constructing them.

**31.—(1)** If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work or a protective work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Secretary of State reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Secretary of State must 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) If during the construction of a specified work or a protective work by the Secretary of State, Network Rail gives notice to the Secretary of State that Network Rail desires itself to construct that part of the specified work or protective 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 then, if the Secretary of State decides that part of the specified work or protective work is to be constructed, Network Rail must assume construction of that part of the specified work or protective work and the Secretary of State must, regardless of any such approval of a specified work or protective work under paragraph 27(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work or protective work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 32(a) provide such details of the formula by which those sums have been calculated as the Secretary of State may reasonably require.

(4) 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 is to be set off against any sum payable by the Secretary of State to Network Rail under this paragraph.

**32.** The Secretary of State must repay to Network Rail 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 Secretary of State as provided by paragraph 27(3) or in constructing any protective works under the provisions of paragraph 27(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 Secretary of State 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, signallers, watchkeepers and other persons whom it is 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;

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

- (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.

**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.

(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.

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

- (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.
- 34.** If at any time after the completion of a specified work or a protective work, not being a work vested in Network Rail, Network Rail gives notice to the Secretary of State informing it that the state of maintenance of any part of the specified work or protective work appears to be such as adversely affects the operation of railway property, the Secretary of State must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work or protective work in such state of maintenance as to not adversely affect railway property.
- 35.** The Secretary of State must 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 unless the Secretary of State has first consulted Network Rail and the Secretary of State must 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.
- 36.** 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 must, provided that 56 days’ previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Secretary of State, be repaid by the Secretary of State to Network Rail.
- 37.—(1)** The Secretary of State must pay to Network Rail 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 a protective work or the failure thereof; or

- (b) by reason of any act or omission of the Secretary of State or of any person in the Secretary of State's employ or of the Secretary of State's contractors or others whilst engaged upon a specified work or a protective work,

and the fact that any act or thing may have been done by Network Rail on behalf of the Secretary of State or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision will 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 Secretary of State from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the Secretary of State reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior written consent of the Secretary of State.

(3) The sums payable by the Secretary of State under sub-paragraph (1) may include a sum equivalent to the relevant costs.

(4) 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 must 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.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator under 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's railway network as a result of the construction, maintenance or failure of a specified work or a protective 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.

**38.** Network Rail must, on receipt of a request from the Secretary of State, at a frequency to be agreed between the Secretary of State and Network Rail, provide the Secretary of State free of charge with written estimates of the costs, charges, expenses, future cost forecasts and other liabilities for which the Secretary of State is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 37) and with such information as may reasonably enable the Secretary of State to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

**39.** In the assessment of any sums payable to Network Rail under this Part of this Schedule there must 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 Secretary of State under this Part of this Schedule or increasing the sums so payable.

**40.** The Secretary of State and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the Secretary of State of—

- (a) any railway property shown on the works and/or 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

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

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

**41.** Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

**42.** The Secretary of State must give written notice to Network Rail where any application is required and is proposed to be made for the Secretary of State's consent under article 7 (consent to transfer benefit of Order) and any such notice must be given no later than 28 days before any such application is made and must 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 relates; and
- (c) the name and address of the person acting for the decision-maker to whom the application is to be made.

**43.** The Secretary of State must no later than 28 days from the date that the documents referred to in article 38(1) (certification of plans, etc.) are submitted to and certified by the Secretary of State in accordance with article 38, provide a set of those documents to Network Rail in the form of a computer disc with read only memory.