

SCHEDULES

SCHEDULE 16

Protective Provisions

PART 10

For the protection of the National Trust

117.—(1) The provisions of this Part of this Schedule have effect for the protection of the Trust unless otherwise agreed in writing between the undertaker and the Trust.

(2) In this Part of this Schedule—

“activities” means vegetation clearance, removal of loose rocks, rock scaling, insertion of rock bolts and erecting catch fences and associated stays, cables and anchors;

“construction” includes execution, placing, erecting and insertion, and “construct” and “constructed” have corresponding meanings;

“emergency” means a situation which—

- (a) is unexpected, in that there is little or no warning, or aspects of the event could not have reasonably been predicted in advance;
- (b) is a serious event presenting a risk of harm or damage to people, property or the environment; and
- (c) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and assessments of risk relating to the construction, carrying out, maintenance and, where appropriate, removal of any work and details of the extent, timing and duration of any proposed occupation of property belonging to the Trust for the purpose of engaging in the activities;

“Quarry Bridge 2 works” means the reconstruction of the accommodation bridge under the railway at 122 miles 74 chains providing access to the property of the Trust;

“the Trust” means The National Trust for Places of Historic Interest or Natural Beauty (Registered Charity 205846); and

“Trust property” means any property belonging to the Trust.

Powers of compulsory acquisition

118. The powers of article 27 (compulsory acquisition of rights or imposition of covenants) and article 31 (acquisition of subsoil or airspace only) may only be exercised in relation to Trust property with the consent of the Trust.

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Works provisions

119.—(1) The undertaker must before commencing activities on Trust property or the Quarry Bridge 2 works under the powers of this Order supply to the Trust proper and sufficient plans and method statements for the proposed activities for the reasonable approval of the Trust and the activities must not be commenced except in accordance with such plans and method statements as have been approved in writing by the Trust or settled in accordance with paragraph 126.

(2) The approval of the Trust 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 the Trust the Trust has not indicated its disapproval of those plans and the grounds of disapproval the undertaker may serve upon the Trust written notice requiring the Trust to intimate its approval or disapproval within a further period of 14 days beginning with the date upon which the Trust receives written notice from the undertaker. If by the expiry of the further 14 days the Trust has not intimated its approval or disapproval, the Trust will be deemed to have approved the plans as submitted.

120.—(1) Any activities to be carried out by virtue of paragraph 119 must, when commenced, be carried out—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 119;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the Trust;
- (c) in such manner as to cause as little damage as is possible to the Trust's property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe access to Trust property.

(2) If any damage to Trust property or any such interference or obstruction is caused by the carrying out of, or in consequence of the entry on to Trust property, the undertaker must, notwithstanding any such approval, make good such damage and must pay to the Trust all reasonable expenses to which the Trust may be put by reason of any such damage, interference or obstruction.

(3) Nothing in this Part of this Schedule imposes—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the Trust or its servants, contractors or agents; or
- (b) any liability on the Trust with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

121. The undertaker must—

- (a) at all times afford reasonable facilities to the Trust for access to inspect the activities of the undertaker on Trust property; and
- (b) supply the Trust with all such information as the Trust may reasonably require with regard to activities of the undertaker on Trust property.

122.—(1) Subject to sub-paragraph (2) the undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any Trust property, unless preventing such access is with the consent of the Trust or is in the case of an emergency.

(2) Sub-paragraph (1) does not apply to the Quarry Bridge 2 works while they are under construction, save that access to any Trust property must not be prevented in the case of an emergency.

123.—(1) Subject to sub-paragraph (2) where in the exercise of the powers conferred by this Order, the undertaker proposes to interfere with or obstruct access by the Trust to Trust property, it must give the Trust 56 days' written notice of that requirement.

(2) Sub-paragraph (1) does not apply in the case of an emergency.

124. Where under this Part of this Schedule the Trust is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed but may be subject to reasonable conditions.

125. The undertaker must repay to the Trust all costs, charges and expenses which it may reasonably incur or which it may sustain—

- (a) in the examination of plans under this Part of this Schedule;
- (b) in respect of the approval of plans submitted by the undertaker and the supervision by the Trust of the carrying out or construction of any activities or the Quarry Bridge 2 works and otherwise in connection with the implementation of the provisions of this Part of this Schedule; and
- (c) in respect of the employment or procurement of the services of any persons whom it is reasonably necessary to appoint for inspecting and watching the activities of the undertaker on Trust property.

Expert determination

126.—(1) Article 56 (arbitration) applies to any difference as to the legal interpretation of this Part of this Schedule and as provided for in sub-paragraph (7).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph (7) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers.

(3) All parties involved in settling any difference must use all reasonable endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The fees of the expert are payable by the parties in such proportions as the expert may determine or, in the absence of such determination, equally.

(5) The expert must—

- (a) invite the parties to make submissions to the expert in writing and copied to the other party to be received by the expert within 21 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 14 days of receipt of the submission;
- (c) issue a decision within 28 days of receipt of the submissions under sub-paragraph (5)(a); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party; and
- (e) any other important and relevant consideration.

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(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 56 (arbitration).