

SCHEDULES

SCHEDULE 2

Article 20

FOR THE PROTECTION OF NETWORK RAIL

1.—(1) For the protection of Network Rail the following provisions shall, unless otherwise agreed in writing between the Promoter and Network Rail, have effect—

(2) In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” shall be construed accordingly;

“the engineer” means an engineer to be appointed by Network Rail for the purpose in question;

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

“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⁽¹⁾) 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;

“railway property” means any railway belonging to Network Rail and any works, apparatus and equipment belonging to Network Rail connected therewith and includes any land held or used by Network Rail for the purposes of such railway or works, apparatus or equipment;

“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 of the specified works or of any such act as is mentioned in paragraph 19;

“specified works” means so much of the authorised works as may be situated upon, across, under, over or within 15 metres of, or may in any way affect, railway property; 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⁾.

(a) (3) (a) The Promoter shall not under the powers conferred by this Order acquire or enter upon, take or use whether temporarily or permanently any railway property or acquire any new rights over any railway property unless such acquisition, entry or use is with the consent of Network Rail.

(b) Where Network Rail is asked to give its consent pursuant to sub-paragraph (a), such consent shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

2. The Promoter shall, before commencing construction of any of the specified works, supply to Network Rail proper and sufficient plans for the reasonable approval of the engineer and shall not

(1) 1985 c. 6.

(2) 1993 c. 43.

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commence such construction of the specified works until plans of those works have been approved in writing by the engineer or settled by arbitration.

3. The approval of the engineer under paragraph 2 shall not be unreasonably withheld or delayed 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 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.

4. If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the Promoter that Network Rail desires itself to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of railway property, the safe operation of traffic on the railways of Network Rail or the services of train operators using the same then, if the Promoter desires such part of the specified works to be constructed, Network Rail 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 as aforesaid.

5. When signifying his approval or disapproval 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 construction of the specified works to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Network Rail or the services of train operators using the same (including any relocation of works, apparatus and equipment necessitated by the specified works) 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 with all reasonable dispatch, or if Network Rail so desires, such protective works shall be carried out by the Promoter at its own expense 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 his reasonable satisfaction.

6. The Promoter shall give to the engineer not less than 180 days' notice of its intention to commence the construction of any of the specified works and also, except in emergency (when it shall give such notice as may be reasonably practicable), of its intention to carry out any works for the maintenance or repair of the specified works in so far as such work of repair or maintenance may affect or interfere with railway property.

7. Any specified work and any protective works to be constructed by virtue of paragraph 5 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 this Schedule;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer; and
- (c) in such manner as to cause as little damage as possible to railway property and as little interference as may be reasonably practicable with the conduct of traffic on the railways of Network Rail,

and, if any damage to railway property or any such interference or obstruction shall be caused by the carrying out of the specified works or protective works, the Promoter shall, notwithstanding any such approval, make good such damage and shall 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.

8. Nothing in paragraph 7 shall impose any liability on the Promoter with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents.

9. The Promoter shall—

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- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction of the works.

10. Network Rail shall at all times afford reasonable facilities to the Promoter and its agents for access to any works carried out by Network Rail 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 construction of those works.

11.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of the specified works, any protective works under paragraph 5 or during a period of 12 months after the completion of the specified works in consequence of the construction of a specified work, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Promoter reasonable notice of its intention to carry out such alterations or additions, the Promoter shall pay to Network Rail the reasonable cost thereof including, in respect of any such permanent alterations and additions, a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations and additions.

(2) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions referred to in sub-paragraph (1) a capitalised sum representing such saving shall be set off against any sum payable by the Promoter to Network Rail under sub-paragraph (1).

12. The Promoter shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of the specified works on behalf of the Promoter as provided by paragraph 4 or in constructing any protective works under the provisions of paragraph 5 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 supervision by the engineer of the construction of the specified works and otherwise in connection with the implementation of the provisions of this Schedule;
- (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 the specified works;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, be required to be imposed by reason or in consequence of the construction or failure of the specified works, 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 reasonable necessary by reason or in consequence of the construction or failure of the specified works.

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

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14. 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 unless it shall have first consulted Network Rail and it shall 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.

15. 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, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Promoter, shall be repaid by the Promoter to Network Rail.

16. The Promoter shall pay to Network Rail 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 the specified works or the failure thereof; or
- (b) by reason of any act or omission of the Promoter or of any person in its employment or of its contractors or others whilst engaged upon the specified works,

and the Promoter shall indemnify Network Rail from and against all claims and demands arising out of or in connection with the specified works or any such failure, act or omission, and the fact that any act or thing may have been done by Network Rail 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 his supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employment or of its contractors or agents) excuse the Promoter from any liability under the provisions of this Schedule.

17. Network Rail shall give to the Promoter reasonable notice of any claim or demand under paragraph 16 and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Promoter.

18.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail's apparatus generated by the operation of the Promoter's apparatus where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus;

“the Promoter's apparatus” means any electric lines, circuits, wires, apparatus, equipment and other works of any description owned or used (or intended to be used) by the Promoter for the purpose of the authorised works; and

“Network Rail's apparatus” means any lines, circuits, wires, apparatus or equipment 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 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 2 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) other than any change carried out by Network Rail as part of, or in consequence of, the authorised works.

(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 (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 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 (both before and after formal submission of plans under paragraph 2) to identify all potential causes of EMI and the measures required to eliminate them;
 - (b) Network Rail shall make available to the Promoter all information in the possession of Network Rail reasonably requested by the Promoter in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and
 - (c) Network Rail 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 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 Network Rail's reasonable discretion and in relation to such modifications paragraph 2 shall have effect subject to this sub-paragraph.
- (6) If at any time prior to the opening of authorised works for the passage of railway traffic and notwithstanding any measures adopted pursuant to sub-paragraph (3) above, the testing or commissioning of authorised works causes EMI, then the Promoter shall 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), 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 for access to the Promoter's apparatus in the investigation of such EMI;
 - (b) Network Rail shall afford reasonable facilities to the Promoter for access to Network Rail's apparatus in the investigation of such EMI; and
 - (c) Network Rail 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.
- (8) Where Network Rail approves modifications to apparatus pursuant to sub-paragraphs (5) or (6)—
- (a) Network Rail 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 sub-paragraph (5);
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 16 shall 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 sub-paragraph 12(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

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(11) In relation to any dispute arising under this paragraph the reference in article 25 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

19.—(1) The sums payable by the Promoter under paragraph 16 shall include a sum equivalent to the relevant costs.

(2) Subject to the terms of any agreement between Network Rail and the relevant train operators regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (1) which relates to the relevant costs of that train operator.

(3) The obligation under sub-paragraph (1) to pay to Network Rail 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 (1).

20. Subject to paragraph 18(11) any difference arising between the Promoter and Network Rail under this Schedule shall be referred to and settled by arbitration under article 25 (arbitration).