

SCHEDULE 8

Article 37

PROTECTIVE PROVISIONS

PART 1

FOR PROTECTION OF SPECIFIED UNDERTAKERS

1.—(1) For the protection of the specified undertakers the provisions of this Part of this Schedule shall, except in so far as otherwise agreed in writing between Network Rail and any specified undertaker, have effect.

(2) The provisions of Schedule 7 (provisions relating to statutory undertakers) shall not apply in relation to apparatus to which this Schedule applies.

(3) Nothing in this Part of this Schedule shall affect the operation of any enactment or agreement in force or entered into before the date on which this Order is made and regulating the relations between Network Rail and a specified undertaker in respect of any apparatus laid or erected in land belonging to Network Rail.

Interpretation

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable a specified undertaker to fulfil its statutory or licensed functions as effectively as is achievable using the apparatus which the alternative apparatus is to replace;

“apparatus” means—

- (a) in the case of a specified undertaker which is an electricity undertaker, electric lines or electrical plant (both as defined in the Electricity Act 1989(1)) belonging to or maintained by that undertaker;
- (b) in the case of a specified undertaker which is a gas undertaker, mains, pipes or other apparatus belonging to, or maintained by, a gas transporter within the meaning of Part 1 of the Gas Act 1986(2), for the purposes of gas supply;
- (c) in the case of a specified undertaker which is a water undertaker, mains, pipes or other apparatus belonging to, or maintained by the undertaker for the purposes of water supply; and
- (d) in the case of a specified undertaker which is a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry (Scotland) Act 2002(3); and
 - (ii) any sewer which is so vested,(not being apparatus in respect of which the relations between Network Rail and the undertakers are regulated by the provisions of Part 4 of the 1991 Act) and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“notice” means notice in writing; and

(1) 1989 c.29, for the definitions of “electric line” and “electrical plant” see section 64 of that Act. The definition of “electrical plant” was amended by the Utilities Act 2000 (c.27), Schedule 6, Part 2, paragraph 38(3).

(2) 1986 c.44.

(3) 2002 asp 3.

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“specified undertaker” means—

- (a) National Grid Gas plc (company no. 02006000) whose registered office is at 1-3 Strand, London WC2N 5EH;
- (b) Scotia Gas Networks PLC (company no. 04958135) whose registered office is at St Lawrence House, Station Approach, Horley, Surrey RH6 9HJ;
- (c) SP Power Systems Limited (company no. SC215841) whose registered office is at 1 Atlantic Quay, Robertson Street, Glasgow, Lanarkshire G2 8SP; and
- (d) Scottish Water Limited (company no. SC207004) whose registered office is at Castle House, 6 Castle Drive, Carnegie Campus, Dunfermline, Fife KY11 8GG,

or any person succeeding any such company as a licence holder within the meaning of Part 1 of the Electricity Act 1989⁽⁴⁾, a gas transporter within the meaning of Part 1 of the Gas Act 1986, a water undertaker within the meaning of the Water Industry (Scotland) Act 2002 or as a sewerage undertaker within the meaning of that Act; and “the specified undertaker” in relation to any apparatus means the specified undertaker to whom the apparatus belongs or by whom it is maintained.

Acquisition of apparatus

3. Notwithstanding any provision of this Order Network Rail shall not acquire any apparatus other than by agreement.

Removal of apparatus

4.—(1) If, in the exercise of the powers conferred by this Order, Network Rail acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part of this Schedule and any right of a specified undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the specified undertaker.

(2) If, for the purpose of constructing any works in, on or under any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, it shall give to the specified undertaker notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a specified undertaker reasonably needs to remove any of its apparatus) Network Rail shall, subject to sub-paragraph (3), afford to the specified undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and thereafter for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the specified undertaker shall, on receipt of a notice to that effect from Network Rail, forthwith use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the specified undertaker and Network Rail or in default of agreement settled by arbitration.

(5) The specified undertaker shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration, and after the grant to the specified undertaker of any such

⁽⁴⁾ For the definition of “licence holder” see section 64 of that Act.

facilities and rights as are referred to in sub-paragraph (2) or (3), proceed with all reasonable despatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by Network Rail to be removed under the provisions of this Part of this Schedule.

(6) Notwithstanding anything in sub-paragraph (5), if Network Rail gives notice to the specified undertaker that it desires itself to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of Network Rail, that work, instead of being executed by the specified undertaker, shall be executed by Network Rail with all reasonable despatch under the superintendence, if given, and to the reasonable satisfaction of the specified undertaker.

(7) Nothing in sub-paragraph (6) shall authorise Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

Alternative apparatus

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to a specified undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between Network Rail and the specified undertaker or in default of agreement settled by arbitration.

(2) In settling those terms and conditions in respect of the alternative apparatus to be constructed in or along any railway of Network Rail, the arbiter shall—

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the authorised works and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the operation of its railway undertaking; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to, if any, the terms and conditions applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by Network Rail in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbiter less favourable on the whole to the specified undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbiter shall make such provision for the payment of compensation by Network Rail to that undertaker as appears to the arbiter to be reasonable having regard to all the circumstances of the particular case.

Construction of authorised works

6.—(1) Not less than 28 days before commencing the construction of any work of the type referred to in paragraph 4(2) that is near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 4(2), Network Rail shall submit to the specified undertaker a plan, section and description of the work to be constructed.

(2) Any such work shall be constructed only in accordance with the plan, section and description as submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made by the specified undertaker in accordance with sub-paragraph (3) for the alteration or otherwise for the protection of the apparatus, or for securing access to the apparatus, and the specified undertaker shall be entitled by its officer to watch and inspect the construction of that work.

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(3) Any requirements made by the specified undertaker under sub-paragraph (2) shall be made within a period of 14 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a specified undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives notice to Network Rail of that requirement, the foregoing provisions of this Part of this Schedule shall have effect as if the removal of such apparatus had been required by the specified undertaker under paragraph 4(2).

(5) Nothing in this paragraph shall preclude Network Rail from submitting at any time, or from time to time, but in no case less than 28 days before commencing the construction of any work, a new plan, section and description of the work in lieu of the plan, section and description previously submitted, and at the time of such submission the provisions of this paragraph shall apply to, and in respect of, the new plan, section and description.

(6) Network Rail shall not be required to comply with sub-paragraphs (1) and (2) in a case of emergency but, in that case, it shall give notice to the specified undertaker as soon as is reasonably practicable, and shall provide a plan of the works so soon as reasonably practicable thereafter, and shall comply with those sub-paragraphs so far as is reasonably practicable in the circumstances.

Removal, etc. expenses

7.—(1) Subject to the following provisions of this paragraph, Network Rail shall repay to a specified undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 4(2).

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.

(3) If in pursuance of the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the specified undertaker by virtue of sub-paragraph (1), shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a specified undertaker in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the specified undertaker any financial benefit by deferment of the time for renewal of the apparatus in the normal course, be reduced by the amount which represents that benefit—

- (a) as calculated in accordance with any code of practice relating to necessary measures where apparatus is affected by or diverted to accommodate major works that has been approved under section 143(2) of the 1991 Act (measures necessary where apparatus affected by major works); or
- (b) if no such code of practice is in force, as agreed between Network Rail and the specified undertaker or (in the absence of agreement) determined by arbitration.

Apparatus in stopped up road

8.—(1) If Waverley Steps is stopped up under article 8 (permanent stopping up of road), any specified undertaker whose apparatus is in Waverley Steps shall have the same powers and rights in respect of that apparatus, subject to the provisions of this Part of this Schedule, as it enjoyed immediately before the stopping up, and Network Rail shall grant to the specified undertaker servitudes reasonably satisfactory to the specified undertaker in respect of the apparatus and access to it, but nothing in this paragraph shall affect any right of Network Rail or of the specified undertaker to require the removal of the apparatus under paragraph 4(2) or 6(4) or the power of Network Rail to carry out works under paragraphs 4 and 6.

(2) Network Rail shall give to any specified undertaker whose apparatus is in Waverley Steps not less than 28 days' notice of its intention to stop up Waverley Steps under article 8.

Apparatus in temporarily stopped up road

9. Notwithstanding the temporary stopping up or diversion of any road under article 10 (temporary stopping up, etc., of roads), any specified undertaker may do anything in the road which is reasonably necessary to enable that undertaker to inspect, repair, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in the road.

Programming of works

10. Where in consequence of the proposed construction of any of the authorised works, Network Rail or a specified undertaker requires the removal of apparatus under paragraph 4(2) or 6(4) or makes requirements for the protection or alteration of apparatus under paragraph 5, Network Rail shall use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and each specified undertaker shall use its best endeavours to co-operate with Network Rail for that purpose.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the works referred to in paragraph 4(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of a specified undertaker, or there is any interruption in any service provided by the specified undertaker, Network Rail shall—

- (a) repay the cost reasonably incurred by the specified undertaker in making good such damage, or restoring the supply, and

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- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs sustained or incurred by it,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose any liability on Network Rail with respect to any damage or interruption to the extent that such damage or interruption is attributable to the neglect or default of the specified undertaker, its officers, servants, contractors or other agents.

(3) A specified undertaker shall give Network Rail reasonable notice of any claim or demand described in sub-paragraph (1) and no settlement or compromise shall be made without the prior consent of Network Rail (not to be unreasonably withheld) which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Exercise of safeguarding and survey powers

12. Network Rail shall, so far as is reasonably practicable, so exercise the powers conferred by article 12 (safeguarding) as not to obstruct or render less convenient the access to any apparatus.

13. Network Rail shall not, in the exercise of the powers conferred by article 13 (survey), make any trial holes which interfere with any apparatus without the consent of the specified undertaker (which shall not be unreasonably withheld).

14. Any notice given under this Part of this Schedule shall be in writing and may be served in any of the ways provided by section 20 of the 2007 Act.

Arbitration

15. Any difference arising between Network Rail and a specified undertaker under this Part of this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration and in determining any difference under this Part of this Schedule the arbiter may require Network Rail to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with the use of any apparatus.

PART 2

FOR PROTECTION OF BALMORAL HOTEL AND PRINCES MALL

1.—(1) For the protection of the protected landowners the provisions of this Part of this Schedule shall have effect except in so far as otherwise agreed in writing between Network Rail and a protected landowner.

(2) This Part of this Schedule is additional to any servitude or other right or any obligation which Network Rail may acquire from a protected landowner under article 14, 15, 16 or 17, and nothing in this Part of this Schedule prejudices the exercise of, or enjoyment of the benefit from, any such servitude, right or obligation.

Interpretation

2. In this Part of this Schedule—

“building regulations” means regulations made under section 1 of the Building (Scotland) Act 2003(5);

(5) 2003 asp 8.

“CEC” means City of Edinburgh Council;

“damage” in the context of damage to protected property, means deterioration in the fabric or decoration of the protected property which is wholly or to a significant extent attributable to the construction or maintenance of a specified work;

“the fire escape” means the existing fire escape from the Balmoral Hotel to Waverley Steps, the approximate position of which is shown on sheet no. 1 of the Order plans marked “BH1”;

“notice” means notice in writing;

“plans” includes sections, drawings, specifications and method statements;

“portal PM1” and “portal PM2” mean respectively the existing portals in the east wall of Princes Mall providing access points between Princes Mall and Waverley Steps, the approximate positions of which are shown on sheet no. 1 of the Order plans marked “PM1” and “PM2”;

“portal PM3” means the portal to be provided in the east wall of Princes Mall as an access point between Princes Mall and Waverley Steps, the approximate position of which is shown on sheet no. 1 of the Order plans marked “PM3”;

“the portals” means portal PM1 and, prior to the provision of portal PM3, portal PM2, and thereafter means portal PM1 and portal PM3;

“PPG” means PPG Metro 39 Limited (company no. SC265768) whose registered office is at 9 Charlotte Square, Edinburgh EH2 4DR and its successors in title as head lessees of Princes Mall;

“protected landowner” means—

- (a) each of RFF, CEC and PPG in relation to Work No. 1; and
- (b) each of CEC and PPG in relation to—
 - (i) Works Nos. 2 and 3; and
 - (ii) portal PM3,

in the case of CEC, in its capacity as owner of the protected property;

“protected property” means the Balmoral Hotel or Princes Mall, as the case may be;

“protected property work” means any work (whether or not it is a work to which building regulations apply) which is carried out on the protected property and which affects the structure of the west wall of the Balmoral Hotel, the basements at the west end of the Balmoral Hotel, the east wall or the south wall of Princes Mall or the roof of Princes Mall;

“RFF” means Rocco Forte & Family Plc (company no. 3277921) whose registered office is at 70 Jermyn Street, London, SW1Y 6NY and its successors in title as owners of the Balmoral Hotel;

“specification of design details” means one or more documents which are so designated by Network Rail as providing details of the design and construction of any direct interface between a specified work and the protected property;

“specified work” means, in the case of RFF, Work No. 1 and, in the case of CEC and PPG, Works Nos. 1, 2 and 3 and portal PM3;

“the staff access doorway” means the existing staff access doorway in the west wall of the Balmoral Hotel providing an access point for staff between Waverley Steps and the Balmoral Hotel, the approximate position of which is shown on sheet no. 1 of the Order plans marked “BH2”; and

“Waverley Steps” includes, where the context so requires, the steps and escalators comprised in Work No. 1;

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references to the use of the fire escape by RFF and the use of the portals as a fire escape include such use by, respectively RFF, CEC and PPG and their respective employees, agents and invitees; and references to rights of access granted to CEC and PPG in respect of the use of the portals other than as fire escapes are to rights exercisable by CEC, PPG, their respective employees and agents, by the tenants and occupiers of and visitors to Princes Mall and by the invitees of CEC, PPG or such tenants and occupiers.

Approval of specification of design details – specified works

3.—(1) Before beginning to construct any specified work except portal PM3, Network Rail shall supply to the protected landowner a specification of design details together (by way of information) with plans of the work and such further particulars available to it as the protected landowner may within 14 days of the supply of the specification of design details, reasonably require.

(2) Any such specified work shall not be constructed except in accordance with the specification of design details as approved in writing by the protected landowner or settled in accordance with paragraph 15 and, where applicable, in accordance with any requirements specified under paragraph 3(3)(c).

(3) Any approval of a protected landowner required under this paragraph—

- (a) shall not be unreasonably withheld or delayed;
- (b) shall be deemed to have been given if it is neither given nor refused within 56 days of the supply of the specification of design details for approval in writing and, in the case of a refusal, accompanied by a statement of the grounds of refusal;
- (c) may be given subject to such reasonable requirements as the protected landowner may impose for the protection of the protected property.

Notice of specified works

4.—(1) Network Rail shall give to the protected landowner not less than 14 days' notice of its intention to commence construction of any specified work, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable, and notice of its completion not later than 7 days after the date on which it is brought into use.

(2) A protected landowner shall be entitled by its officer to watch and inspect the construction of any specified work.

Access to specified works: provision of information

5. Network Rail, on being given reasonable notice, shall—

- (a) at all times allow reasonable facilities to a protected landowner for access to a specified work during its construction for the purposes of assessing the effect of the specified work on the protected property; and
- (b) supply the protected landowner with such information as the protected landowner may reasonably require with regard to a specified work or the method of constructing it.

Alterations to protected property

6.—(1) If during the construction of a specified work, or during a period of 24 months after the completion of a specified work—

- (a) any alterations or additions to a protected property, either permanent or temporary, are reasonably necessary in consequence of the construction of the specified work in order to avoid damage to the protected property; and
- (b) the protected landowner gives to Network Rail reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice),

Network Rail shall pay to the protected landowner the reasonable cost of those alterations or additions.

(2) Any sum payable under this paragraph shall include, in respect of any alterations and additions that are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the protected landowner in maintaining, and, when necessary, renewing any such alterations or additions.

Maintenance of works

7. If at any time after the completion of a specified work other than Work No. 2 a protected landowner gives notice to Network Rail that the state of maintenance of the work appears to be such that the work is causing or is likely to cause damage to the protected property, Network Rail shall, as soon as reasonably practicable after receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such damage.

Repayment of fees, etc.

8. Network Rail shall repay to a protected landowner all reasonable fees, costs, charges and expenses (including payments to contractors undertaking the construction of portal PM3) reasonably and properly incurred by the protected landowner—

- (a) in approving any specification of design details supplied in accordance with paragraph 3;
- (b) in agreeing the proposals for portal PM3 under paragraph 13;
- (c) in inspecting the construction of any specified work, monitoring the effects of construction on the protected property or analysing information supplied under paragraph 5(b);
- (d) in constructing portal PM3; and
- (e) in connection with any alterations or additions the cost of which is payable by Network Rail under paragraph 6.

Conduct of protected property works

9. Paragraphs 3 to 8 shall apply to the carrying out by a protected landowner of any protected property work as if—

- (a) “Network Rail” referred to a protected landowner;
- (b) “protected landowner” referred to Network Rail;
- (c) “specified work” referred to protected property work; and
- (d) “protected property” meant the authorised works other than Work No. 2.

Access through fire escapes

10.—(1) Notwithstanding the extinguishment of rights effected by articles 8(2) and 26(1), until such time as Network Rail makes a grant of rights in accordance with sub-paragraph (3), and subject to paragraph 13, Network Rail shall so far as reasonably practicable, provide access to and from Waverley Steps and over Waverley Steps to Princess Street for the purpose of escape from fire—

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- (a) to RFF from the fire escape; and
- (b) to CEC and PPG from the portals.

(2) Subject (in relation to CEC and PPG) to paragraph 13, in constructing Work No. 1 Network Rail shall provide a means of access to Waverley Steps and Princes Street from the fire escape and the portals for the purposes of this paragraph.

(3) Subject (in relation to CEC and PPG) to paragraph 13, Network Rail shall grant RFF, CEC and PPG such rights of access on to Waverley Steps and rights of way over Waverley Steps as may be necessary to enable RFF to use the fire escape and CEC and PPG to use the portals as fire escapes, in both cases at all times.

(4) Rights granted pursuant to this paragraph may be subject to such conditions as Network Rail may require for the purposes of protecting its property or its railway undertaking, including conditions obliging RFF, CEC and PPG to reimburse the cost to Network Rail of providing a means of access to Waverley Steps, or from Waverley Steps to Princes Street, that is secured at times when access over Waverley Steps is not available to the general public.

Access through the staff access doorway and the portals

11.—(1) Notwithstanding the extinguishment of rights effected by articles 8(2) and 26(1), until such time as Network Rail makes a grant of rights in accordance with sub-paragraph (3), and subject (in relation to CEC and PPG) to paragraph 13, Network Rail shall so far as reasonably practicable, provide access to and from Waverley Steps and over Waverley Steps to Princes Street—

- (a) to RFF from the staff access doorway; and
- (b) to CEC and PPG from the portals.

(2) Subject (in relation to CEC and PPG) to paragraph 13, in constructing Work No. 1 Network Rail shall provide means of access to Waverley Steps from the staff access doorway and the portals for the purposes of this paragraph.

(3) Subject (in relation to CEC and PPG) to paragraph 13, Network Rail shall grant RFF, CEC and PPG respectively rights of access through the staff access doorway and the portals to and from Waverley Steps, such rights to be exerciseable at all times when access over Waverley Steps is available to the general public.

(4) Rights granted pursuant to this paragraph may be subject to such conditions as Network Rail may require for the purposes of protecting its property or its railway undertaking, including conditions obliging RFF, CEC and PPG to close and secure the staff access doorway and the portals at times when access over Waverley Steps is not available to the general public.

Access to retail units

12.—(1) Notwithstanding the extinguishment of rights effected by articles 8(2) and 26(1), until such time as Network Rail makes a grant of rights in accordance with sub-paragraph (2), Network Rail shall so far as reasonably practicable, permit RFF, its servants and agents and its tenants of shops 2 to 4, 3 and 5 Waverley Steps access over Waverley Steps for pedestrian traffic only to those shops at all times when access over Waverley Steps is available to the general public.

(2) Network Rail shall grant RFF a servitude right of access over Waverley Steps for pedestrian traffic only to shops 2 to 4, 3 and 5 Waverley Steps, such right to be exerciseable at all times when access over Waverley Steps is available to the general public.

Provision of portal PM3

13.—(1) Network Rail shall, not later than the date on which it complies with paragraph 3 in relation to CEC and PPG, provide the protected landowner with its proposals for the construction of portal PM3 (“the proposals”), including plans and such further particulars available to it as the protected landowner may within 14 days of the supply of the specification of design details, reasonably require.

(2) The protected landowner shall within 21 days of the receipt of the proposals or the provision of further particulars, whichever is later, notify Network Rail as to whether it agrees the proposals.

(3) The parties shall endeavour to agree the proposals, including arrangements for construction to be carried out by either of them and the conditions and programming of construction.

(4) Network Rail may specify a date by which such agreement must be reached (being a date reasonably required so as to enable Network Rail to adhere to its programme for the construction of the authorised works), and if the parties fail to reach agreement by that date the proposals shall be deemed to be withdrawn.

(5) On the deemed withdrawal of the proposals Network Rail shall cease to be under any obligation to the protected landowner—

(a) to provide portal PM3; or

(b) to provide means of access for any purpose to or from Waverley Steps through portal PM2.

14. Any notice given under this Part of this Schedule shall be in writing and may be served in any of the ways provided by section 20 of the 2007 Act.

Dispute resolution

15. Any difference arising between Network Rail and any of RFF, CEC or PPG under this Part of this Schedule (other than a difference as to its meaning or construction or relating to portal PM3) shall be determined by arbitration.