

SCHEDULE

BRITISH RAILWAYS (NO. 2)

PART IV

PROTECTIVE PROVISIONS

Crown rights

- 25 Nothing in this Order affects prejudicially any estate, right, power, privilege or exemption of the Crown and, without prejudice to the generality of the foregoing, nothing in this Order authorises the Board to take, use, or interfere with, any land or rights—
- (a) belonging to Her Majesty in right of the Crown and under the management of the Crown Estate Commissioners; or
 - (b) belonging to a government department, or held in trust for Her Majesty for the purposes of a government department;
- without the consent in writing of those commissioners on behalf of Her Majesty or, as the case may be, that government department.ET

For protection of telecommunications operators

- 26 For the protection of telecommunications operators the following provisions shall, unless otherwise agreed in writing between the Board and the telecommunications operators concerned, have effect:—
- (1) In this section expressions defined in the Telecommunications Act 1984 have the same meanings as in that Act:
 - (2) The temporary stopping up or diversion of any part of Station Road, Cambus, or Grange Road, Alloa, under section 8 (Temporary stoppage of roads) of this Order shall not affect any right of a telecommunications operator under paragraph 9 of the telecommunications code to inspect, maintain, adjust, repair or alter any apparatus which, at the time of the stopping up or diversion, is in that part of the road.

For protection of electricity, gas, water and sewerage undertakers

- 27 For the protection of the several undertakers referred to in this section, the following provisions shall, unless otherwise agreed in writing between the Board and the undertakers concerned, have effect:—
- (1) In this section—
 - “adequate alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;
 - “apparatus” means—
 - (a) in the case of electricity undertakers, electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to or maintained by such undertakers; or

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(b) in the case of gas, water or sewerage undertakers any mains, pipes, sewers or other apparatus belonging to or maintained by such undertakers;

(not being, except in paragraph (2) below, apparatus in respect of which the relations between the Board and the undertakers are regulated by the provisions of Part IV of the Act of 1991) and includes any structure for the lodging therein of apparatus or for giving access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land includes a reference to apparatus or alternative apparatus under, over or upon land; and

“undertakers” means any person authorised to carry on, in any area within which the Board are by this Order authorised to purchase land or execute works, an undertaking for the supply of gas or water, for the generation, transmission or supply of electricity or for the provision of sewerage services; and, in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained:

- (2) The temporary or permanent stopping up or diversion of a road under the powers of this Order shall not affect any right of undertakers to inspect, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in that road:
- (3) The Board, in the case of the powers conferred by section 9 (Underpinning of buildings near works) of this Order, shall, so far as is reasonably practicable, so exercise those powers as not to obstruct or render less convenient the access to any apparatus:
- (4) Notwithstanding anything in section 10 (Use of sewers, etc., for removing water) of this Order, no use shall be made by the Board in the construction of the works of pumping or other like modes of removing water except where reasonably necessary or in case of emergency or unforeseen accident or for the purpose of removing rainwater or other small amounts of water:
- (5) Notwithstanding anything in this Order or shown on the deposited plan, the Board shall not acquire any apparatus under the powers of this Order otherwise than by agreement:
- (6) If the Board, in the exercise of the powers of this Order, acquire any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this section and any right of the undertakers to maintain, repair, renew or inspect that apparatus in that land shall not be extinguished until adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers:
- (7) If the Board, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, require the removal of any apparatus placed in that land, they shall give to the undertakers written 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 so as to provide adequate alternative apparatus in lieu of the apparatus to be removed, and in that case (or if in consequence of the exercise of any of the powers of this Order the undertakers reasonably require to remove any apparatus) the Board shall, if it is reasonably practicable to do so, afford to the undertakers the necessary facilities and

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rights for the construction of the alternative apparatus in other land of the Board and thereafter for the maintenance, repair, renewal and inspection of that apparatus:

Provided that, if the alternative apparatus or any part thereof is to be constructed elsewhere than in other land of the Board, or the Board are unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or that part thereof is to be constructed, the undertakers shall, on receipt of a written notice to that effect from the Board, forthwith use their best endeavours to obtain the necessary facilities and rights in that last-mentioned land:

- (8) (a) Any alternative apparatus to be constructed in land of the Board under this section shall be constructed in such manner and in such line or situation as may be agreed between the undertakers and the Board or in default of agreement determined by arbitration;
 - (b) The undertakers shall, after the alternative apparatus to be provided or constructed has been agreed or determined by arbitration as aforesaid and after the grant to the undertakers of any such facilities and rights as are referred to in paragraph (7) above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Board to be removed under the provisions of this section:
- (9) Notwithstanding anything in paragraph (8) above, if the Board give notice in writing to the undertakers that they desire themselves 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 the Board, that work, in lieu of being executed by the undertakers, shall be executed by the Board with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertakers;

Provided that nothing in this paragraph shall authorise the Board to execute the actual 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:

- (10) Where, in accordance with the provisions of this section, the Board afford to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection in land of the Board of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Board and the undertakers or in default of agreement determined by arbitration:

Provided that—

- (a) in determining those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of the Board, the arbiter shall—
 - (i) give effect to all reasonable requirements of the Board for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Board or the traffic on the railway; and
 - (ii) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions applicable to the apparatus, if any, constructed in or along the railway for which the alternative apparatus is to be

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substituted and to any other reasonable operational requirements of the undertakers;

- (b) if the facilities and rights to be afforded by the Board in respect of any alternative apparatus and the terms and conditions subject to which the same are to be granted are in the opinion of the arbiter less favourable on the whole to the undertakers than the facilities and rights enjoyed by them 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 the Board to the undertakers in respect thereof as appears to him to be reasonable having regard to all the circumstances of the particular case:
- (11) (a) Not less than 28 days before commencing to execute any part of the works which will or may be within 15 metres of, or may otherwise affect, any apparatus the removal of which has not been required by the Board, the Board shall submit to the undertakers a plan, section and description of the works to be executed;
- (b) Those works shall be executed only in accordance with the plan, section and description submitted as aforesaid and in accordance with such reasonable requirements as may be made by the undertakers for the alteration or otherwise for the protection of the apparatus or for securing access thereto and the undertakers shall be entitled by their officer to watch and inspect the execution of those works:

Provided that—

- (i) if the undertakers within 14 days after the submission to them of a plan, section and description shall, in consequence of the works proposed by the Board, reasonably require the removal of any apparatus and give written notice to the Board of that requirement, the foregoing provisions of this section shall apply as if the removal of the apparatus had been required by the Board;
 - (ii) nothing in this sub-paragraph shall preclude the Board from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description thereof in lieu of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of the new plan, section and description;
 - (c) The Board shall not be required to comply with sub-paragraph (a) above in a case of emergency but in that case they shall give to the undertakers notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (b) above so far as reasonably practicable in the circumstances:
- (12) Subject to paragraph (13) below, the Board shall pay to the undertakers the costs, charges and expenses reasonably incurred by the undertakers 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 (7) above, less the value of any apparatus removed under the provisions of this section (that value being calculated after removal) and shall also make compensation to the undertakers—

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- (a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this section); and
- (b) for any other expenses, loss, damages, penalty or costs incurred by the undertakers;

by reason of the execution, maintenance, user or failure of those works or otherwise by reason of the exercise by the Board of the powers of this Order:

- (13) If the cost of maintaining, using, repairing or renewing any apparatus is reduced by reason of any of the works, including the provision of alternative apparatus under this section, a capitalised sum representing that saving shall be paid by the relevant undertakers to the Board or set off against any sums payable by the Board to the relevant undertakers under this section:
- (14) Any difference arising between the Board and the undertakers under this section shall be determined by arbitration:
- (15) Nothing in this section shall affect the provisions of any enactment or agreement regulating the relations between the Board and the undertakers in respect of any apparatus laid or erected in land belonging to the Board at the date of the passing of the Act confirming this Order.