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SCHEDULE

BRITISH RAILWAYS (NO. 3)

PART IV

PROTECTIVE PROVISIONS

Crown rights

- 27 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.

For protection of telecommunications operators

- 28 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 road under section 9 (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 and water undertakers

- 29 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
 - (b) in the case of gas or water undertakers any mains, pipes or other apparatus belonging to or maintained by such undertakers;

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(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 or for the generation, transmission or supply of electricity; 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 10 (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 this Order or shown on the deposited plans the Board shall not acquire any apparatus under the powers of this Order otherwise than by agreement:
- (5) 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:
- (6) 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 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:

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- (7) (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 (6) 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:
- (8) Notwithstanding anything in paragraph (7) 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:

- (9) 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 substituted;
- (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:

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- (10) (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:
- (11) Subject to paragraph (12) 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 (6) 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—
- (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:
- (12) 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

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undertakers to the Board or set off against any sums payable by the Board to the relevant undertakers under this section:

- (13) Any difference arising between the Board and the undertakers under this section shall be determined by arbitration:
- (14) 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.

For protection of sewers of Strathclyde Regional Council

30 For the protection of the sewers of the regional council the following provisions shall, unless otherwise agreed in writing between the Board and the regional council, have effect:—

(1) In this section—

“sewer” means, subject to paragraph (2) below, any sewer of the regional council and includes any manholes, ventilating shafts, pumps or other accessories of a sewer; and

“specified work” means any part of the works which will or may be situated within 15 metres measured in any direction of a sewer:

- (2) Nothing in this section shall apply to apparatus of the regional council in respect of which the relations between the Board and the regional council are regulated by the provisions of Part IV of the Act of 1991:
- (3) Wherever in this section provision is made with respect to the approval or consent of the regional council, that approval or consent shall be in writing and shall not be unreasonably withheld:
- (4) The Board shall not commence the execution of any specified work until they have given to the regional council not less than 56 days' notice in writing of their intention to commence the same, together with plans as described in paragraph (9) below (in this section referred to as “the said plans”), for their approval and until the regional council have signified their approval of those plans:

Provided that, if within 56 days after the submission of the said plans the regional council have not approved or disapproved them, they shall be deemed to have approved the said plans as submitted:

- (5) The Board shall comply with, and conform to, all reasonable orders, directions and regulations of the regional council in the execution of any specified work and shall provide new, altered or substituted works in such manner as the regional council reasonably require for the protection of, and for preventing injury or impediment to, any existing sewer by reason of the specified work and shall indemnify the regional council against all expenses occasioned thereby:
- (6) All new, altered or substituted works shall, where so required by the regional council, be done by or under the direction, superintendence and control of an officer of the regional council duly appointed for the purpose at the cost of the Board, and all costs, charges and expenses reasonably incurred by the regional council by reason of those works, whether in the execution thereof, or in the preparation or examination of plans

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or designs, or in such direction, superintendence or control as aforesaid, or otherwise, shall be paid to the regional council by the Board:

- (7) When any new, altered or substituted works or any work of defence connected therewith are completed by or at the cost of the Board under the provisions of this section, they shall thereafter be as fully and completely under the direction, jurisdiction and control of the regional council as any sewers or works now or hereafter may be:
- (8) The regional council may require the Board in constructing any specified work to make any reasonable deviation within the limits of deviation from the lines or levels shown upon the said plans for the purpose of avoiding injury, or risk of injury, to any sewer and the Board shall in constructing those works deviate accordingly:
- (9) The plans to be submitted to the regional council for the purposes of this section shall be detailed plans, drawings, sections and specifications which shall describe the exact position and manner in which, and the level at which, any specified work is proposed to be constructed and shall accurately describe the position of all sewers of the regional council within the limits of deviation (for which purpose the regional council shall allow the Board access to plans in their possession and to any of their sewers in order to enable the Board to obtain reliable information) and shall comprise detailed drawings of every alteration which the Board may propose to make in any sewer:
- (10) The regional council may require such modifications to be made in the said plans as may be reasonably necessary to secure the main drainage system of the district in which any specified work is situated against interference or risk of damage and to provide and secure proper and convenient means of access to any sewer:
- (11) The Board shall be liable to make good, or, if the regional council so decide, to bear any expense reasonably incurred by the regional council in making good, all injury or damage caused by, or resulting from, the construction of any specified work to any sewer, drain or work vested in the regional council:
- (12) If the Board in the construction of any specified work or any new, altered or substituted work or any work of defence connected therewith provided in accordance with this section, damage or, without the consent of the regional council, alter or in any way interfere with any existing sewer, the Board shall—
 - (a) pay to the regional council any additional expense which may be reasonably incurred by the regional council in the maintenance, management or renewal of any new, altered or substituted sewer which may be necessary by reason of the said construction; and
 - (b) give to the regional council full, free and uninterrupted access at all times to any such new, altered or substituted sewer and every reasonable facility for the inspecting, maintenance, alteration and repair thereof:
- (13) It shall be lawful for an officer of the regional council duly appointed for the purpose at any reasonable time, on giving to the Board such notice as may in the circumstances be reasonable, to enter upon and inspect any specified work or any other work constructed under the powers of this section:
- (14) The approval by the regional council of any plans, or the superintendence by them of any work, under the provisions of this section, shall not exonerate the Board from any liability or affect any claim for damages under this section or otherwise:

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- (15) Any difference arising between the Board and the regional council under this section (other than a difference as to the meaning or construction of this section) shall be determined by arbitration.

For protection of roads and road traffic, etc

31 The following provisions shall, unless otherwise agreed in writing between the Board and the road works authority or Hamilton District Council, as the case may be, have effect:—

(1) In this section—

“the appropriate council” means the road works authority or the district council, as the case may be;

“the district council” means the Hamilton District Council;

“road” has the same meaning as in the Roads (Scotland) Act 1984; and

“road equipment” means any works or apparatus on or under any road comprising any refuge, lamp column, traffic sign, bollard, bin for refuse or road materials, surface water drain, gully or sewer for conducting road drainage or apparatus respectively connected therewith:

(2) Wherever in this section provision is made with respect to the approval or consent of the appropriate council, that approval or consent shall be in writing and shall not be unreasonably withheld:

(3) The Board shall not, without the consent of the road works authority, construct any part of the works which will involve interference with any road, except in accordance with plans and sections submitted to, and approved by, the road works authority:

Provided that, if within 56 days after those plans and sections have been submitted the road works authority have not approved or disapproved them, they shall be deemed to have approved the plans and sections as submitted:

(4) Before commencing to construct any part of the works, or any works or conveniences connected therewith, which will involve interference with a road, or the traffic in any road, the Board shall consult the road works authority as to the time when that part shall be commenced, and as to the extent of the surface of the road which it may be reasonably necessary for the Board to occupy or the nature of the interference which may be caused to the said traffic in the construction of that part, and as to the time during which, and the extent to which, the road shall be interfered with, and as to the conditions under which that part shall be constructed, so as to reduce so far as possible inconvenience to the public and to ensure the safety of the public, and that part shall not be constructed, and the surface of the road shall not be occupied by the Board, and the said interference with traffic shall not be caused, except at such time, to such extent, and in accordance with such conditions as may be agreed between the Board and the road works authority or determined by arbitration:

(5) At least 56 days before commencing to make any hole from the surface of any part of any road the Board shall serve notice in writing on the road works authority of their intention to commence the same and that notice shall describe the place at which any hole is intended to be made, and the steps, if any, to be taken by the Board to safeguard pedestrians using any footway, footpath or other way in which the hole is intended to be made, and, if within 21 days after the receipt of the notice any objection is made by the road works authority, the matter shall (unless otherwise agreed) be determined

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by arbitration before the making of the hole is commenced, but if no objection is made the Board may proceed with the making of the hole:

- (6) The Board shall secure that so much of the works as is constructed under, or so as to affect, any road is so designed, constructed and maintained as to carry the appropriate loading for that road recommended at the time of construction of those works by the Secretary of State, and the Board shall indemnify the road works authority against, and make good to the road works authority, all expenses which they may reasonably incur or be put to in the maintenance or repair of any road, or any tunnels, sewers, drains or apparatus therein, by reason of any non-compliance by the Board with the provisions of this paragraph:
- (7) It shall be lawful for an authorised officer of the appropriate council at all reasonable times to enter upon and inspect any part of the works which is in or under any road or which may affect any road or any property or work of the appropriate council, during the execution thereof, and the Board shall give to that officer all reasonable facilities for such inspection and, if he is of the opinion that the construction of that part of the works is attended with danger to any road or to any road equipment or any other property or work belonging to, or under the jurisdiction or control of, the appropriate council on or under any road, the Board shall adopt such measures and precautions as may be reasonably necessary for the purpose of preventing any damage or injury thereto:
- (8) The Board shall not alter, disturb or in any way interfere with any road equipment or any other property or work belonging to, or under the jurisdiction or control of, the appropriate council on or under any road, or the access thereto, without the consent of the appropriate council, and any alteration, adaptation, diversion, replacement or reconstruction of any road equipment or any other property or work as aforesaid which may be necessary shall be made by the appropriate council or the Board as the appropriate council think fit and any costs, charges and expenses reasonably incurred by the appropriate council in so doing shall be repaid to the appropriate council by the Board:
- (9) The Board shall not remove any soil or material from any road except such as must be excavated in the execution of the works:
- (10)
 - (a) The Board shall not, except with the consent of the road works authority, deposit any soil, subsoil or materials, or stand any vehicle or plant, on any road so as to obstruct the use of such road by any person or, except with the like consent, deposit any soil, subsoil or materials on any road except within a hoarding;
 - (b) All costs, charges and expenses reasonably incurred by the road works authority in removing any soil, subsoil or materials deposited on any road in contravention of this paragraph shall be repaid to the road works authority by the Board:
- (11) Where any part of any road has been temporarily broken up or disturbed by the Board, the Board shall make good the subsoil, foundations and surface of such part of the road to the reasonable satisfaction of the road works authority and maintain the same to the reasonable satisfaction of the road works authority for such time as may be reasonably required for the permanent reinstatement of the road:

Provided that the reinstatement of such part of the road shall in the first instance be of a temporary nature only and the permanent reinstatement thereof shall be carried out by the road works authority as soon as reasonably practicable after the completion of

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the temporary reinstatement, and the costs, charges and expenses reasonably incurred by the road works authority in so doing shall be repaid to the road works authority by the Board:

- (12) The Board shall compensate the appropriate council for any subsidence of, or damage to, any road or any road equipment or any other property or work belonging to, or under the jurisdiction or control of, the appropriate council on or under any road which may be caused by, or in consequence of, any act or default of the Board, their contractors, servants or agents and whether such damage or subsidence happens during the construction of the works or at any time thereafter:
- (13) Any difference arising between the Board and the appropriate council under this section (other than a difference as to the meaning or construction of this section) shall be determined by arbitration.