

SCHEDULES

SCHEDULE 10

PROTECTION OF CERTAIN PERSONS

PART I

PROTECTION OF RAILTRACK

1.—(1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Railtrack PLC, have effect.

(2) In this Part of this Schedule—

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

“engineer” means an engineer appointed by Railtrack PLC for the purpose in question;

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

“Railtrack” means Railtrack PLC and any associated company of Railtrack PLC which holds property for railway purposes and for this purpose “associated company” means any company which is (within the meaning of section 763 of the Companies Act 1985(1)) the holding company of Railtrack PLC, a subsidiary of Railtrack PLC or another subsidiary of the holding company of Railtrack PLC;

“railway property” means any railway belonging to Railtrack PLC and any works, apparatus and equipment of Railtrack connected with any such railway, and includes any land held or used by Railtrack for the purposes of such a railway or such works, apparatus or equipment;

“specified work” means so much of any of the authorised works as is situated upon, across, under or over or may in any way affect railway property and which has been notified as a specified work in accordance with paragraph 3(1) below; and

“Station” means Railtrack PLC’s Charing Cross Station in the City of Westminster.

2.—(1) The undertaker shall not under the powers conferred by or under this Order acquire or use, or acquire new rights over, any railway property unless such acquisition or use is with the consent of Railtrack PLC.

(2) The undertaker shall not in exercise of the powers under article 3(3) above carry out any works outside the limits of deviation which affect railway property unless the carrying out of such works is with the consent of Railtrack PLC.

(3) Subject to sub-paragraph (4) below, the powers under article 5 above to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the Highways Act 1980(2)), is under the control or management of, or is maintainable by, Railtrack, except with the consent of Railtrack PLC.

(1) 1985 c. 6.

(2) 1980 c. 66.

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(4) Sub-paragraph (3) above shall not apply to the carrying out under this Order of emergency works, within the meaning of Part III of the 1991 Act.

(5) The undertaker shall not in the exercise of the powers conferred by or under this Order prevent pedestrian or vehicular access to the Station or any other railway property unless preventing such access is with the consent of Railtrack PLC.

(6) The undertaker shall not exercise the powers under section 271 or 272 of the Town and Country Planning Act 1990⁽³⁾, as applied by Schedule 11 to this Order, in relation to any right of access of Railtrack to railway property but such right of access may be diverted with the consent of Railtrack PLC.

(7) The undertaker shall not exercise the powers under article 14(1) or 15 above or the powers under section 11(3) of the 1965 Act, in respect of any railway property except with the consent of Railtrack PLC.

(8) Where Railtrack PLC is asked to give its consent pursuant to sub-paragraphs (2), (3), (6) or (7) above such consent shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

3.—(1) The undertaker shall before commencing construction of any authorised work supply to Railtrack PLC proper and sufficient plans of that work and shall not commence construction of that work until—

- (a) the engineer has notified the undertaker in writing whether or not such work is a specified work; and
- (b) where the engineer notifies the undertaker that the work is a specified work, plans thereof have been approved in writing by the engineer (such approval not to be unreasonably withheld) or settled by mediation or arbitration in accordance with paragraph 15 below.

(2) The notification required by sub-paragraph (1)(a) above shall be given not more than 10 days after such plans have been supplied to Railtrack PLC.

(3) If by the end of the period of 28 days beginning with the date on which plans have been supplied to Railtrack PLC under sub-paragraph (1) above (or such shorter period as may be agreed between the undertaker and Railtrack PLC) 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) When signifying his approval of the plans the engineer, may specify any protective works (whether temporary or permanent) which in his reasonable opinion should be carried out by the undertaker before commencement of the specified works to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Railtrack PLC and the Station or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by the authorised works) and the comfort and safety of passengers or customers.

4. Specified works (and any protective works specified by the engineer pursuant to paragraph 3(4) above) shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved (or deemed to have been approved) or settled as aforesaid,
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer,
- (c) in such manner as to cause as little damage as is possible to railway property, and
- (d) so far as reasonably practicable, and except to the extent permitted by any approval of plans under paragraph 3(1) above, so as not to interfere with or obstruct the free, uninterrupted

(3) 1990 c. 8.

and safe use of any railway of Railtrack PLC or the traffic thereon, the operation of the Station or the use by passengers of railway property;

and, if any damage to railway property or any such interference or obstruction is caused or takes place in consequence of the construction of the specified works, the undertaker shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to Railtrack PLC, or procure the payment to Railtrack PLC of, all reasonable expenses to which Railtrack may be put and compensation for any loss or damage which it may sustain by reason of any such damage, interference or obstruction which may occur.

5. The undertaker shall—

- (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 thereof.

6.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of the specified works or during a period of 12 months after the completion of those works in consequence of the construction of the specified works in order to ensure the safety of railway property or the continued safe and efficient operation of the railways of Railtrack PLC and Railtrack PLC gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker shall pay to Railtrack PLC the reasonable cost thereof including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The engineer shall, in respect of the capitalised sums referred to in this paragraph provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Railtrack PLC under this paragraph.

7. The undertaker shall repay to Railtrack PLC all reasonable fees, costs, charges and expenses reasonably incurred by Railtrack—

- (a) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property in order to prevent as far as is possible all interference, obstruction, danger or accident arising from works for the maintenance of or the failure of the authorised works,
- (b) resulting from any speed restrictions which may, in the opinion of the engineer, be required to be imposed as a result of the construction, maintenance or failure of the authorised works, or from the substitution, suspension or diversion of railway services which the engineer considers may be necessary for the same reason,
- (c) in respect of any additional temporary lighting of railway property in the vicinity of the authorised works, made reasonably necessary as a result of the authorised works or the failure of those works.

8.—(1) If at any time after the completion of the specified works Railtrack PLC gives notice to the undertaker informing it that the state of maintenance of the specified works appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified works in such state of maintenance as not adversely to affect the operation of railway property.

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(2) If within—

- (a) a period of 28 days after notice has been given to the undertaker under sub-paragraph (1) above, or
- (b) in the case of an emergency, such shorter period as the occasion may require,

the undertaker does not commence, and continue with reasonable dispatch, the steps required to be taken in consequence of the notice, Railtrack may without further notice to the undertaker itself take those steps, including any steps which require Railtrack to enter or use property belonging to or under the control of the undertaker.

(3) The cost to Railtrack of implementing sub-paragraph (2) above shall be repaid to Railtrack PLC by the undertaker.

9. Where so required by the engineer, the undertaker shall, to the reasonable satisfaction of the engineer, fence off the specified works or take such other steps as the engineer may require to be taken for the purpose of separating the specified works from railway property, whether on a temporary or permanent basis or both.

10. All temporary works and equipment erected or placed by the undertaker under the powers of this Order (other than in the course of the construction of the specified works) on, over or under any railway of Railtrack PLC shall, as soon as reasonably practicable, be removed by the undertaker at times to be agreed with, and to the reasonable satisfaction of, the engineer and in such a way as to cause as little damage to railway property, and as little interference with or delay or interruption to the traffic on the railways of Railtrack PLC, as is possible; and if any damage to railway property or such interference, delay or interruption is caused by any such failure to remove any such temporary works and equipment the undertaker shall forthwith make good such damage and pay to Railtrack the reasonable costs and expenses to which Railtrack may be put and reasonable compensation for any loss which Railtrack may sustain by reason of such damage, interference, delay or interruption.

11. The undertaker shall not provide any illumination or illuminated sign on or in connection with the specified works in the vicinity of any railway belonging to Railtrack PLC unless it shall first have consulted Railtrack PLC and it shall comply with Railtrack PLC's reasonable requirements for preventing confusion between such illumination or illuminated sign and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

12.—(1) The undertaker shall pay to Railtrack PLC a sum equivalent to all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred or suffered by Railtrack—

- (a) by reason of the maintenance of the specified works or the failure thereof; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon the maintenance of the specified works;

and the undertaker shall indemnify Railtrack from and against all loss and damage arising out of or in connection with the maintenance of the specified works or any such failure, act or omission and the fact that any act or thing may have been done by Railtrack on behalf of the undertaker 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 Railtrack or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(2) Railtrack PLC shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without prior consent of the undertaker.

(3) The sums payable under sub-paragraph (1) above shall include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Railtrack PLC and the relevant train operators regarding the terms of payment of the relevant costs in respect of that train operator, Railtrack PLC shall promptly pay to each train operator the amount of any sums which Railtrack PLC receives under sub-paragraph (3) above which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) above to pay Railtrack PLC the relevant costs shall, in the event of default, be enforceable directly by the train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4) above.

(6) In the assessment of any sums payable under this paragraph there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Railtrack PLC if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this paragraph or increasing the sums so payable.

(7) In this paragraph “relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restrictions of the use of Railtrack PLC’s railway network as a result of the construction or maintenance or failure of the authorised works or any such failure, act or omission as is mentioned in sub-paragraph (4) above.

13. The undertaker and Railtrack PLC may enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the deposited plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Railtrack PLC relating to any railway property.

14. Any provision of an agreement entered into under paragraph 13 above which provides for Railtrack PLC to require the transfer to the undertaker of the property referred to in that paragraph at any future date shall not be subject to the rule against perpetuities.

15. Any difference arising between the undertaker and Railtrack PLC under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by mediation in accordance with procedures to be agreed between Railtrack PLC and the undertaker or, in default of agreement as to the procedures for mediation, shall be referred to and settled by arbitration in accordance with article 36 above.