

## SCHEDULES

### SCHEDULE 12

#### PROTECTIVE PROVISIONS

#### PART 4

#### PROTECTIVE PROVISION FOR THE HOBSON'S CONDUIT TRUST

##### **Application**

27. The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between Network Rail and the Trust.

##### **Interpretation**

28. In this Part of this Schedule—

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
  - (b) any relaying, renewal or maintenance of that work,
- and “construct” and “constructed” are construed accordingly;

“detriment” means any damage to the watercourse, including—

- (a) any obstruction of, or interference with, or hindrance or danger to, any use of the watercourse;
- (b) the erosion of the bed or banks of the watercourse, or the impairment of the stability of any works or lands forming part of the watercourse;
- (c) the deposit of materials or the siltation of the watercourse so as to damage the watercourse;
- (d) the pollution of the watercourse;
- (e) any significant alteration in the water level of the watercourse, or significant interference with the supply of water to it, or drainage of water from it (save to the extent that such alteration or interference was otherwise approved by the Trust);
- (f) any harm to the ecology of the watercourse; and
- (g) any interference with the exercise by any person of rights over the watercourse,

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

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

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” are to be construed accordingly;

“protective work” means a work constructed under paragraph 32(3)(a);

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 16 metres of the watercourse, or may in any way adversely affect the watercourse;

“the Trust” means the Hobson’s Conduit Trust;

“the watercourse” means Hobson’s Brook and Conduit, and includes any works, lands or premises belonging to the Trust, or under its management or control, that are held or used by the Trust in connection with Hobson’s Brook and Conduit.

### **Exercise of Powers**

**29.**—(1) Network Rail must not exercise the powers conferred by or under this Order in respect of any watercourse except with the consent of the Trust.

(2) The consent of the Trust under sub-paragraph (1) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions.

**30.** Network Rail must not use any land or property of the Trust forming part of the watercourse for the passage or siting of vehicles, plant or machinery employed in the construction of a specified work other than—

- (a) with the consent in writing of the engineer whose consent must not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
  - (i) for the prevention of detriment; or
  - (ii) in order to avoid or reduce any inconvenience to the Trust, its officers and agents and all other persons lawfully on such land or property,

but nothing in this paragraph applies in relation to anything done in accordance with any approval given by the Trust under paragraph 32.

### **Survey of watercourse**

**31.**—(1) Before the commencement of the initial construction of any part of the specified work and again following practical completion of the specified work Network Rail must bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Trust and Network Rail, of a survey (including a dip-survey to measure the depth of the watercourse and ecological survey) (“the survey”) of so much of the watercourse and of any land and works of Network Rail in existence at the date of the coming into force of this Order which may provide support for the watercourse as will or may be affected by the specified works.

(2) For the purposes of the survey Network Rail must—

- (a) on being given reasonable notice afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of Network Rail which may provide support for the watercourse as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as the surveyor may reasonably require with regard to such existing works of Network Rail and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the watercourse (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part of this Schedule apply with

all necessary modifications to any such dewatering or reduction in the water level as though those measures were specified works.

(4) Copies of the report of the survey must be provided to both the Trust and Network Rail at no cost to the Trust.

### **Notification, approval, protective works**

**32.**—(1) Network Rail must before commencing construction of any specified work including any temporary works supply to the Trust proper and sufficient plans of that work and such further particulars available to it as the Trust may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified work until plans of that work are:

- (a) approved in writing by the engineer;
- (b) deemed to have been approved by the engineer pursuant to sub-paragraph (2) below; or
- (c) settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 28 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to the Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective works must be constructed by Network Rail or by the Trust at Network Rail's request with all reasonable dispatch and Network Rail must not commence the construction of a specified work until the engineer has notified Network Rail that the protective works have been completed to the engineer's reasonable satisfaction.

**33.** Network Rail must give to the engineer 14 days' notice of its intention to commence the construction of any of the specified or protective works (unless otherwise agreed in writing by Network Rail and the Trust), save in the case of an emergency in which case Network Rail must give such notice as may be reasonably practicable.

### **Carrying out specified works and protective works**

**34.**—(1) Any specified works or protective works must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled in accordance with this Part of this Schedule and with any requirements made under paragraph 32(3);
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable; and
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the watercourse, except to the extent that temporary obstruction has otherwise been agreed by the Trust.

(2) Nothing in this Order authorises Network Rail to make or maintain any permanent works in or over the watercourse which will reduce the dimensions of the watercourse other than with the written consent of the Trust.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(3) Following the completion of the construction of the specified works Network Rail must restore the watercourse to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

**35.** Network Rail must not in the course of constructing a specified work or a protective work or otherwise in connection with those works do or permit anything which may result in the pollution of the watercourse or the deposit of materials in it and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

**36.** Network Rail must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting as the engineer may reasonably require during the construction of the specified or protective works.

### **Access**

**37.**—(1) Network Rail on being given reasonable notice must—

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

(2) The Trust on being given reasonable notice must—

- (a) at all times afford reasonable facilities to Network Rail and its agents for access to any works carried out by the Trust under this Part of this Schedule during their construction; and
- (b) supply Network Rail with such information as it may reasonably require with regard to such works or the method of constructing them and Network Rail must reimburse the Trust's reasonable costs in relation to the supply of such information.

### **Maintenance of the specified works and protective works**

**38.** If at any time after the completion of a specified work or a protective work, not being a work vested in the Trust, the Trust gives notice to Network Rail informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, Network Rail must, on 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 detriment.

### **Expenses**

**39.**—(1) Subject to sub-paragraph (2), Network Rail must repay to the Trust all fees, costs, charges and expenses reasonably and properly incurred by the Trust—

- (a) in constructing any protective works reasonably required under paragraph 32(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by Network Rail and the reasonable supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors and other persons whom it is reasonably necessary to appoint for inspecting any watercourse and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of the affected watercourse.

(2) Nothing in this paragraph shall impose any liability on Network Rail with respect to any fees, costs, charges and expenses attributable to the act, neglect, default or omission of the Trust or its servants, contractors or agents and any liability of Network Rail under this paragraph shall be reduced proportionately to the extent to which any fees, costs, charges or expenses are attributable to the act, neglect, default or omission of the Trust or its servants, contractors or agents.

#### **Detriment to the watercourse**

**40.** If any detriment to the watercourse is caused by the construction of the specified works or the protective works carried out by Network Rail, Network Rail (if so required by the Trust) must make good such detriment and pay to the Trust all reasonable and proper expenses to which the Trust may be put, and compensation for any loss which the Trust may sustain, in making good or otherwise by reason of the detriment to the watercourse.

#### **Disputes**

**41.** Any difference arising between Network Rail and the Trust under this Part of this Schedule (other than a difference as to the meaning or construction of the Part of this Schedule) is to be referred to and settled by arbitration in accordance with article 44 (arbitration).