

SCHEDULES

SCHEDULE 9

PROTECTIVE PROVISIONS

PART 6

FOR THE PROTECTION OF RAILWAY INTERESTS

74.—(1) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 68(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(2) Subject to sub-paragraph (4), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(3) In order to facilitate the undertaker’s compliance with sub-paragraph (2)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 68(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(4) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 68(1) has effect subject to this sub-paragraph.

(5) Prior to the commencement of operation of the authorised development the undertaker shall test the use of the authorised development in a manner that shall first have been agreed with Network Rail and if, notwithstanding any measures adopted pursuant to sub-paragraph (2), the testing of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the undertaker’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (4)) to Network Rail’s apparatus.

(6) In the event of EMI having occurred—

Changes to legislation: There are currently no known outstanding effects for the The A47/A11 Thickthorn Junction Development Consent Order 2022, Paragraph 74. (See end of Document for details)

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker’s apparatus in the investigation of such EMI;
 - (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail’s apparatus in the investigation of such EMI;
 - (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail’s apparatus or such EMI; and
 - (d) the undertaker shall not allow the use or operation of the authorised development in a manner that has caused or will cause EMI until measures have been taken in accordance with this paragraph to prevent EMI occurring.
- (7) Where Network Rail approves modifications to Network Rail’s apparatus pursuant to sub-paragraphs (4) or (5)—
- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail’s apparatus;
 - (b) any modifications to Network Rail’s apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with sub-paragraph (5).
- (8) To the extent that it would not otherwise do so, the indemnity in paragraph 78(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail’s apparatus) or in consequence of any EMI to which sub-paragraph (5) applies.
- (9) For the purpose of paragraph 73(a) any modifications to Network Rail’s apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.
- (10) In relation to any dispute arising under this paragraph the reference in [F1 article 51] (Arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.
- (11) In this paragraph—
- “EMI” means, subject to sub-paragraph (1), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and
- “Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

Textual Amendments

F1 Words in [Sch. 9 para. 74\(10\)](#) substituted (31.7.2023) by [The A47/A11 Thickthorn Junction Development Consent \(Correction\) Order 2023 \(S.I. 2023/886\)](#), art. 1, [Sch.](#)

Commencement Information

I1 Sch. 9 para. 74 in force at 4.11.2022, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The A47/A11 Thickthorn Junction Development Consent Order 2022, Paragraph 74.