

SCHEDULES

SCHEDULE 1

Article 2

DESCRIPTION OF THE SCHEDULED WORKS

Commencement Information

II Sch. 1 in force at 7.8.2012, see [art. 1](#)

Work No.1 A barrier across the mouth of the New Cut on the river Orwell, with a moveable gate providing a channel width when open of 20 metres together with piers, a stilling basin, piling, scour protection, flood defence walls linking to other flood defences and other associated structures.

Work No.2 A building for control and associated purposes in relation to the barrier.

Work No.3 A new underground electricity cable and conduit being a replacement for part of an existing 132 KV cable between TM1686343408 and TM1705243383.

SCHEDULE 2

Articles 6 and 7

DIVERSION OF POSSIBLE RIGHTS OF WAY

PART 1

SUBSTITUTED WAYS FOR ALLEGED RIGHTS OF WAY IF SUCH RIGHTS ARE ESTABLISHED

Commencement Information

I2 Sch. 2 Pt. 1 in force at 7.8.2012, see [art. 1](#)

<i>Alleged Rights of Way</i>	<i>Possible diversion or substitute Rights of Way</i>
Alleged footpath (Claim A) between points D3, D4, D5, D6, D7 and D8	Footpath between points D3, D4, D6, D7 and D8
Alleged byway (Claim G) between D9 and D10	Byway between D9 and D10
Alleged footpath (West Bank Claim A to B to C)	Footpath diverted through the flood gate between the points marked D1 and D2
Alleged byway (West Bank Claim A to B)	Byway between A and B diverted through the flood gate between points marked D1 and D2 and narrower than otherwise provided for between those points

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PART 2

PATHS TO BE TEMPORARILY STOPPED UP

Commencement Information

I3 Sch. 2 Pt. 2 in force at 7.8.2012, see [art. 1](#)

<i>(1)</i> <i>Path or street affected</i>	<i>(2)</i> <i>Extent of stopping up</i>	<i>(3)</i> <i>Specified temporary diversion</i>
Proposed restricted byway 37	Between E and H and between I and J	Between E,G and H and between I and J
Byway 38	Within the limits of deviation	–
Proposed public footpath 40	Within the limits of deviation	None, but without prejudice to provision made for proposed restricted byway 37
Alleged footpath (Claim A)	Within the limits of deviation	–
Alleged byway (Claim B)	Within the limits of deviation	–
Alleged footpath (Claim C)	Within the limits of deviation	–
Alleged footbath (Claim D)	Within the limits of deviation	–
Alleged byway (Claim E)	Within the limits of deviation	–
Alleged footpath (Claim F)	Within the limits of deviation	–
Alleged byway (Claim G)	Within the limits of deviation	–
Alleged byway (West Bank Claim byway A to B)	Within the limits of deviation	–
Alleged footpaths (West Bank Claim footpaths A to B to C)	Within the limits of deviation	–

SCHEDULE 3

Article 24

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

Commencement Information

I4 Sch. 3 para. 1 in force at 7.8.2012, see [art. 1](#)

2.—(1) Without limitation on the scope of paragraph 1, the Land Compensation Act 1973(1) has effect subject to the modifications set out in sub-paragraphs (2) and (3).

(2) In section 44 (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4—

- (a) in subsection (1), for the words “land is acquired or taken” there is substituted the words “a right over land is purchased”; and
- (b) in subsection (1), for the words “acquired or taken from him” there is substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5—

- (a) for the word “part” in paragraphs (a) and (b) there is substituted the words “a right over land consisting”;
- (b) for the word “severance” there is substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there is substituted the words “right proposed”; and
- (d) for the words “part is” there is substituted the words “right is”.

Commencement Information

I5 Sch. 3 para. 2 in force at 7.8.2012, see [art. 1](#)

3.—(1) The 1965 Act has effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are to be read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without limitation on the scope of sub-paragraph (1), Part 1 of the 1965 Act applies in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

Commencement Information

I6 Sch. 3 para. 3 in force at 7.8.2012, see [art. 1](#)

4. For section 7 of the 1965 Act (measure of compensation), there is substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard must be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage (if any) to be sustained by the owner of the land by reason of its severance from other land of the owner, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

(1) 1973 c. 26.

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Commencement Information

I7 Sch. 3 para. 4 in force at 7.8.2012, see [art. 1](#)

5. For section 8 of the 1965 Act (provisions as to divided land), there is substituted the following—

“8.—(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (‘the relevant land’)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (‘the tribunal’); and
- (b) before the tribunal has determined that question the tribunal is satisfied that the person has an interest in the whole of the relevant land and is able and willing to sell that interest—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land, or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs,

the Ipswich Barrier Order 2012 (‘the Order’) in relation to that person, ceases to authorise the purchase of the right and is to be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice is to be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section is to be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”

Commencement Information

I8 Sch. 3 para. 5 in force at 7.8.2012, see [art. 1](#)

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraph 2(3) and 7(2) of Schedule 4 (common land),

are to be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

Commencement Information

I9 Sch. 3 para. 6 in force at 7.8.2012, see [art. 1](#)

7. Section 11 of the 1965 Act (powers of entry) is so modified as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which is to be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act is modified correspondingly.

Commencement Information

I10 Sch. 3 para. 7 in force at 7.8.2012, see [art. 1](#)

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) applies with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

Commencement Information

I11 Sch. 3 para. 8 in force at 7.8.2012, see [art. 1](#)

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) is so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

Commencement Information

I12 Sch. 3 para. 9 in force at 7.8.2012, see [art. 1](#)

SCHEDULE 4

Article 26

ACQUISITION OF NEW RIGHTS ONLY

Commencement Information

I13 Sch. 4 in force at 7.8.2012, see [art. 1](#)

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<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which new rights may be acquired</i>
1b, 2aa, 2af, 2b, 4a, 4b and 5a.	Flood wall and gate
2ah, 2al, 2ad, 2m, 2n, 2t, 2w and 6b.	Diversion of existing 132kV electricity cable (Work No.3)
2e and 4e.	Landscaping
2j, 2k and 2l.	Access, maintenance and crane oversailing
2q	Access to new control building (Work No. 2)

SCHEDULE 5

Article 27

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<p>Commencement Information I14 Sch. 5 in force at 7.8.2012, see art. 1</p>
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<i>(1)</i> <i>Number of land shown on land plans</i>	<i>(2)</i> <i>Purpose for which temporary possession may be taken</i>
1a, 1c, 1e, 1f, 2a, 2ab, 2ac, 2ae, 2ag, 2ai, 2aj, 2ak, 2c, 2f, 2g, 2h, 2i, 2o, 2p, 2r, 2s, 2u, 2v, 2x, 2y, 2z, 4c, 4d, 4f, 4g, 4h, 5b and 6a.	Construction working area

SCHEDULE 6

Article 43

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

1. Sections 271 to 274 of the planning Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) applies in relation to any land acquired or appropriated by the Agency under this Order subject to the following provisions of this Schedule; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) have effect accordingly.

<p>Commencement Information I15 Sch. 6 para. 1 in force at 7.8.2012, see art. 1</p>
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2. In the provisions of the planning Act, as applied by paragraph 1, references to the appropriate Minister are references to the Secretary of State.

Commencement Information

I16 Sch. 6 para. 2 in force at 7.8.2012, see [art. 1](#)

3. Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the planning Act, as applied by paragraph 1, any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from the Agency compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

Commencement Information

I17 Sch. 6 para. 3 in force at 7.8.2012, see [art. 1](#)

4. Paragraph 3 does not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer,

is be entitled to recover from the Agency compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

Commencement Information

I18 Sch. 6 para. 4 in force at 7.8.2012, see [art. 1](#)

5. The provisions of the planning Act mentioned in paragraph 1, as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which Part 3 of the 1991 Act applies.

Commencement Information

I19 Sch. 6 para. 5 in force at 7.8.2012, see [art. 1](#)

6. In this Schedule—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(2); and

“public utility undertakers” has the same meaning as in the Highways Act 1980(3).

(2) 2003 c. 21.

(3) 1980 c. 66.

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Commencement Information

I20 Sch. 6 para. 6 in force at 7.8.2012, see [art. 1](#)

SCHEDULE 7

Article 44

PROTECTION OF A.B. PORTS

1. The following provisions of this Schedule have effect unless otherwise agreed in writing between the Agency and A.B. Ports.

Commencement Information

I21 Sch. 7 para. 1 in force at 7.8.2012, see [art. 1](#)

2. In this Schedule—

“accumulation” means any accumulation of silt or other material which constitutes an impediment to navigation;

“construction” includes execution and placing, maintenance, extension, enlargement, alteration, replacement, relaying, and removal, and “construct” and “constructed” shall be construed accordingly;

“erosion” means any erosion of the bed or banks of the river or any jetty or other structure of whatever nature owned or occupied by A.B. Ports;

“harbour property” means any land or works owned or administered by A.B. Ports as part of its harbour undertaking at Ipswich;

“plans” includes sections, descriptions, drawings, specifications and method statements;

“specified work” means so much of any permanent or temporary work authorised by this Order (which includes, for the avoidance of doubt, any removal of gravel or other material, any dredging or similar work and any geotechnical investigations that may be undertaken) as is on, in, under or over—

- (a) the surface of land below the level of mean high water springs forming part of the river; or
- (b) any other harbour property.

Commencement Information

I22 Sch. 7 para. 2 in force at 7.8.2012, see [art. 1](#)

3.—(1) The Agency must not under the powers conferred by this Order acquire or use or acquire new rights over any harbour property except with the consent of A.B. Ports.

(2) The Agency must not exercise the powers conferred by article 5 (power to execute street works) of this Order in relation to any street which is under the control or management of A.B. Ports except with the consent of A.B. Ports.

(3) The consent of A.B. Ports under this paragraph must not be unreasonably withheld but may be given subject to reasonable requirements as A.B. Ports may make for the purposes of performing its statutory functions.

Commencement Information

I23 Sch. 7 para. 3 in force at 7.8.2012, see [art. 1](#)

4.—(1) Before beginning any operations for the construction of any specified work (but this requirement does not apply to minor works or maintenance or repair), the Agency must submit to A.B. Ports plans of the work and such further particulars available to it as A.B. Ports may within 14 days of the submission of the Plans reasonably require.

(2) Any specified work must not be constructed except in accordance with such plans as may be approved in writing by A.B. Ports or determined to be in accordance with article 54 (arbitration) of this Order.

(3) Any approval of A.B. Ports required under this paragraph must not be unreasonably withheld and—

- (a) shall be deemed to be given if it is neither given or refused (with an indication of the grounds for refusal) within 28 days of the submission of the plans or where further particulars are submitted under sub-paragraph (1), within 28 days of the submission of those particulars; and
- (b) may be given subject to such reasonable requirements as A.B. Ports may make for the protection of—
 - (i) navigation in, or the flow or regime of, the river; or
 - (ii) the use of its land for the purposes of performing its statutory functions.

Commencement Information

I24 Sch. 7 para. 4 in force at 7.8.2012, see [art. 1](#)

5. The Agency must give to A.B. Ports not less than 14 days' written notice of its intention to commence the construction of a specified work (but this requirement does not apply to minor works of maintenance or repair) and, not more than 14 days after completion of such construction, must give to A.B. Ports written notice of such completion.

Commencement Information

I25 Sch. 7 para. 5 in force at 7.8.2012, see [art. 1](#)

6. The Agency must carry out all operations for the construction of any specified works with all reasonable dispatch to the reasonable satisfaction of A.B. Ports so that navigation in, or the flow or regime of, the river and the exercise of A.B. Ports' statutory functions do not suffer more interference than is reasonably practicable and A.B. Ports shall be entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.

Commencement Information

I26 Sch. 7 para. 6 in force at 7.8.2012, see [art. 1](#)

7. After the purpose of any temporary works has been accomplished the Agency must with all reasonable dispatch, or after a reasonable period of notice in writing from A.B. Ports requiring the Agency so to do, remove any such temporary works or any materials relating thereto which may have been placed below the level of high water by or on behalf of the Agency; and, on failing to so

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do within a reasonable period after receiving such notice, A.B. Ports may remove the same and may recover the reasonable costs of so doing from the Agency.

Commencement Information

I27 Sch. 7 para. 7 in force at 7.8.2012, see [art. 1](#)

8.—(1) If—

- (a) during the construction of a tidal work or within 10 years after the completion of that work and wholly or partly in consequence of its construction; or
- (b) during the exercise of the powers conferred by article 8 (power to dredge) of this Order or within 10 years after and wholly or partly in consequence of the exercise of those powers,

there is caused or created an accumulation or erosion which results or is likely to result in interference with navigation or damage to the harbour property, the Agency must, if so requested by A.B. Ports acting reasonably and having regard in particular to its and the Agency's statutory functions, remedy such accumulation or erosion to the extent attributable to such construction or exercise of powers in the manner specified in sub-paragraph (3) and, if it refuses or fails to do so, A.B. Ports may itself cause the work to be done and may recover the reasonable cost of doing so from the Agency.

(2) If any such accumulation or erosion in consequence of such construction or exercise of the powers conferred under article 8 arises within the said period of 10 years and is remedied in accordance with sub-paragraph (1), any recurrence of such accumulation or erosion must, from time to time, if reasonably so required to do by A.B. Ports after notice in writing to it from the Agency and having regard in particular to its and the Agency's statutory functions, be so remedied by the Agency during the said period of 10 years and at any time thereafter, save that the Agency's obligation under this paragraph shall cease if, following the remedying of any accumulation or erosion, a period of 10 years elapses without any further accumulation or erosion being caused or created in consequence of such construction or exercise.

(3) For the purposes of sub-paragraph (1) and (2) above—

- (a) in the case of an accumulation, the remedy shall be its removal; and
- (b) in the case of erosion, the remedy shall be the carrying out of such reconstruction works and other protective works or measures as may be necessary.

(4) In the event that any surveys, inspection, tests or sampling establish that such accumulation or erosion may have been caused in any event by factors other than the construction of a tidal work or the exercise of the powers conferred by article 8, the Agency is liable to remedy such accumulation or erosion only to the extent that the same is attributable to such construction or exercise.

(5) For the purposes of sub-paragraph (1) the date of completion of a work is the date on which it is brought into use.

Commencement Information

I28 Sch. 7 para. 8 in force at 7.8.2012, see [art. 1](#)

9. The Agency must pay to A.B. Ports the reasonable costs of such alterations to the marking and lighting of the navigational channel of the river as may be necessary during or within five years of the completion of and in consequence of the construction of a tidal work and afford to A.B. Ports such facilities as it may reasonably require for the placing and maintenance on any tidal work of signals, tide-boards, tide-gauges or other apparatus for the safety or benefit of navigation.

Commencement Information

I29 Sch. 7 para. 9 in force at 7.8.2012, see [art. 1](#)

10. Without prejudice to the other provisions of this Schedule, the Agency shall be responsible for, and make good to A. B. Ports, all costs which may reasonably be incurred by or occasioned to A.B. Ports by reason of or arising from or in connection with—

- (a) the carrying out of surveys, inspections, tests and sampling within and of the river (including the bed and banks of the river) where A.B. Ports has reasonable cause to believe that the construction of any of the tidal works or the exercise of the powers conferred by article 8 is causing or has caused any such accumulation or erosion;
- (b) the surveillance, co-ordination and regulation of traffic within the Port of Ipswich which becomes reasonably necessary by reason of the exercise or the prospective exercise by the Agency of its powers to close the river or any part of the river to navigation under article 11 of this Order.

Commencement Information

I30 Sch. 7 para. 10 in force at 7.8.2012, see [art. 1](#)

11.—(1) The Agency must indemnify A.B. Ports from all claims, demands, proceedings or damages, which may be made or given against, or recovered from A.B. Ports and any costs or expense reasonably incurred by A.B. Ports by reason of any damage to the bed or banks of the river or other harbour property which is caused by the construction, maintenance or failure of any specified work or any act or omission of the Agency, its contractors, agents or employees whilst engaged upon the work.

(2) A.B. Ports shall give to the Agency reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand shall be made without the consent of the Agency, which, if it notifies A.B. Ports that it desires to do so, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Commencement Information

I31 Sch. 7 para. 11 in force at 7.8.2012, see [art. 1](#)

12. Nothing in paragraph 11 imposes any liability on the Agency with respect to any damage to the extent that it is attributable to any prior defect, want of maintenance or want of repair to the beds or banks of the river or other harbour property or to the act, neglect or default of A.B. Ports, its officers, servants, contractors or agents but the fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by A.B. Ports, or to its satisfaction, or in accordance with a determination under article 54 (arbitration) of the Order, does not (in the absence of negligence on the part of A.B. Ports, its officers, servants, contractors or agents) relieve the Agency from any liability under the provisions of this Schedule.

Commencement Information

I32 Sch. 7 para. 12 in force at 7.8.2012, see [art. 1](#)

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SCHEDULE 8

Article 45

PROTECTION OF NETWORK RAIL

1. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between the Agency and Network Rail and, in the case of paragraph 14, any other person on whom rights or obligations are conferred by that paragraph.

Commencement Information

I33 Sch. 8 para. 1 in force at 7.8.2012, see [art. 1](#)

2. In this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of his powers under section 8 of the Railways Act 1993;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985⁽⁴⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993);

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

(a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

(b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

Commencement Information

I34 Sch. 8 para. 2 in force at 7.8.2012, see [art. 1](#)

3.—(1) Where under this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(4) 1985 c. 6.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail shall—

- (a) co-operate with the Agency with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works pursuant to this Order.

Commencement Information

I35 Sch. 8 para. 3 in force at 7.8.2012, see [art. 1](#)

4.—(1) The Agency shall not exercise the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Agency shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The Agency shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 6 to this Order, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The Agency shall not under the powers of this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

Commencement Information

I36 Sch. 8 para. 4 in force at 7.8.2012, see [art. 1](#)

5.—(1) The Agency shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of his disapproval the Agency may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the Agency. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the Agency that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Agency desires such part of the specified work to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of and to

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the reasonable satisfaction of the Agency in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the Agency.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail or by the Agency, if Network Rail so desires, and such protective works shall be carried out at the expense of the Agency in either case with all reasonable dispatch and the Agency shall not commence the construction of the specified works until the engineer has notified the Agency that the protective works have been completed to his reasonable satisfaction.

Commencement Information

I37 Sch. 8 para. 5 in force at 7.8.2012, see [art. 1](#)

6.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and 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 is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the Agency shall, notwithstanding any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) Nothing in this Schedule shall impose any liability on the Agency with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the Agency or its servants, contractors or agents.

Commencement Information

I38 Sch. 8 para. 6 in force at 7.8.2012, see [art. 1](#)

7. The Agency shall—

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

Commencement Information

I39 Sch. 8 para. 7 in force at 7.8.2012, see [art. 1](#)

8. Network Rail shall at all times afford reasonable facilities to the Agency and its agents for access to any works carried out by Network Rail under this Schedule during their construction and shall supply the Agency with such information as it may reasonably require with regard to such works or the method of constructing them.

Commencement Information

I40 Sch. 8 para. 8 in force at 7.8.2012, see [art. 1](#)

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Agency reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the Agency shall pay to Network Rail the reasonable cost of those alterations or additions 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 Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the Agency, Network Rail gives notice to the Agency that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the Agency decides that part of the specified work is to be constructed, Network Rail shall assume construction of that part of the specified work and the Agency shall, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the Agency may reasonably require.

(4) 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 Agency to Network Rail under this paragraph.

Commencement Information

I41 Sch. 8 para. 9 in force at 7.8.2012, see [art. 1](#)

10. The Agency shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the Agency as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;

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- (b) in respect of the approval by the engineer of plans submitted by the Agency and the supervision by him of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

Commencement Information

I42 Sch. 8 para. 10 in force at 7.8.2012, see [art. 1](#)

11. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the Agency informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the Agency shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

Commencement Information

I43 Sch. 8 para. 11 in force at 7.8.2012, see [art. 1](#)

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

Commencement Information

I44 Sch. 8 para. 12 in force at 7.8.2012, see [art. 1](#)

13. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Agency, be repaid by the Agency to Network Rail.

Commencement Information

I45 Sch. 8 para. 13 in force at 7.8.2012, see [art. 1](#)

14.—(1) The Agency shall pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail—

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

and the Agency shall indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the Agency 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 Network Rail or of any person in its employ or of its contractors or agents) excuse the Agency from any liability under the provisions of this sub-paragraph.

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

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

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail shall promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

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

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

Commencement Information

I46 Sch. 8 para. 14 in force at 7.8.2012, see [art. 1](#)

15. Network Rail shall, on receipt of a request from the Agency, from time to time provide the Agency free of charge with written estimates of the costs, charges, expenses and other liabilities for which the Agency is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 14) and with such information as may reasonably enable the Agency to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs).

Commencement Information

I47 Sch. 8 para. 15 in force at 7.8.2012, see [art. 1](#)

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16. In the assessment of any sums payable to Network Rail under this Schedule 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 Network Rail 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 Agency under this Schedule or increasing the sums so payable.

Commencement Information

I48 Sch. 8 para. 16 in force at 7.8.2012, see [art. 1](#)

17. The Agency and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the Agency of—

- (a) any railway property shown on the works and land 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 Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

Commencement Information

I49 Sch. 8 para. 17 in force at 7.8.2012, see [art. 1](#)

18. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part I of the Railways Act 1993.

Commencement Information

I50 Sch. 8 para. 18 in force at 7.8.2012, see [art. 1](#)

19. The Agency shall give written notice to Network Rail if any application is proposed to be made by the Agency for the Secretary of State's consent, under article 53 (certification of plans etc.) of this Order and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

Commencement Information

I51 Sch. 8 para. 19 in force at 7.8.2012, see [art. 1](#)

20. The Agency shall no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 53 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

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I52 Sch. 8 para. 20 in force at 7.8.2012, see [art. 1](#)

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Changes and effects yet to be applied to :

- art. 13(4) words substituted by [S.I. 2016/1154 Sch. 29 Pt. 2 para. 41](#)