

SCHEDULES

SCHEDULE 1

Articles 6, 20 and 23

ACQUISITION OF LAND AND RIGHTS

PART 1

ACQUISITION OF LAND

<i>(1)</i> <i>Number of land shown on the land plan</i>	<i>(2)</i> <i>Purposes for which land may be acquired</i>
03	Widening of highway and hard landscaping in connection with the authorised works.
05, 37, 38, 43, 44, 45, 46, 47, 48	Construction and maintenance of the authorised works.
06, 07	Installation and maintenance of overhead power apparatus and supports and hard landscaping in connection with the authorised works.
34, 35, 36	Construction and maintenance of the Order works.
39	Discontinuance of unused exit and hard landscaping in connection with the authorised works.
41	Provision of gate and construction of wall in connection with the authorised works.

PART 2

ACQUISITION OF RIGHTS ONLY

<i>(1)</i> <i>Number of land shown on the land plan</i>	<i>(2)</i> <i>Purposes for which right may be acquired</i>
04	For the purposes of placing and maintaining utility apparatus.
08, 15, 22, 33	For the diversion of utility apparatus.
09, 10, 12, 13, 16, 17, 18, 19, 20, 21, 23, 24, 25, 29, 30, 31, 32	For the purposes of placing and maintaining equipment and apparatus, maintaining retaining walls and diversion of utility apparatus.

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(1) <i>Number of land shown on the land plan</i>	(2) <i>Purposes for which right may be acquired</i>
14	For the purposes of strengthening works to the Easy Row subway and diversion of utility apparatus.

SCHEDULE 2

Article 23

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

Compensation enactments

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.

2.—(1) Without limitation to 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(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 (measure of compensation in case of severance) of the 1965 Act as substituted by paragraph 4—

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

(3) For section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition)(2), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5, substitute—

“(1) In determining under section 8(1) and 34(2) of the Compulsory Purchase Act 1965, or section 166(2) of the Town and Country Planning Act 1990 whether—

- (a) a right over land consisting of a house, building or manufactory can be taken without material detriment or damage to the house, building or manufactory; or
- (b) a right over land consisting of a park or garden belonging to a house can be taken without seriously affecting the amenity or convenience of the house,

the Upper Tribunal must take into account not only the effect of the acquisition of the right but also the use to be made of the right to be acquired, and, in a case where the right is proposed to be acquired for works or other purposes extending to other land, the effect of the whole of the works and the use to be made of the other land.”.

(1) 1973 c. 26.

(2) As amended by section 16(3) of, and Schedule 5 to, the Compulsory Purchase (Vesting Declarations) Act 1981 (c. 66), section 4 of, and paragraph 29(1) of Schedule 2 to, the Planning (Consequential Provisions) Act 1990 (c. 11) and S.I. 2009/1307.

Application of the 1965 Act

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 (compulsory purchase under Acquisition of Land Act of 1946) 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.

4. For section 7 (measure of compensation in case of severance) of the 1965 Act substitute—

“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.”

5. For section 8 (other provisions as to divided land) of the 1965 Act substitute—

“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 Chamber of the Upper 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 and—
 - (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 Midland Metro (Birmingham City Centre Extension, etc.) (Land Acquisition and Variation) Order 2016(3) (“the Order”), in relation to that person, ceases to authorise the purchase of the right and is 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 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.

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(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 affects any other power of the authority to withdraw the notice.”.

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) paragraphs 2(3) and 7(2) of Schedule 4 (common land),

are modified so 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.

7. Section 11(4) (powers of entry) of the 1965 Act is modified so as to secure that, as from the date on which the acquiring authority has served notice to treat in respect of any right, they have power, exercisable in the equivalent circumstances and subject to the equivalent conditions, to enter for the purpose of exercising that right (which is deemed for this purpose to have been created on the date of service of the notice); and sections 12(5) (penalty for unauthorised entry) and 13(6) (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

8. Section 20(7) (protection of interests of tenants at will etc.) of the 1965 Act 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.

9. Section 22 (interests omitted from purchase) of the 1965 Act is modified so 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.

(4) Section 11 was amended by section 34(1) of, and Schedule 4 to, the Acquisition of Land Act 1981 (c. 67), section 3 of, and part 1 of Schedule 1 to, the Housing (Consequential Provisions) Act 1985 (c. 71), section 14 of, and paragraph 12(1) of Schedule 5 to, the Church of England (Miscellaneous Provisions) Measure 2006 (No. 1) and S.I. 2009/1307.

(5) Section 12 was amended by section 56(2) of, and part 1 of Schedule 9 to, the Courts Act 1971 (c. 23).

(6) Section 13 was amended by sections 62(3), 139(4) to (9) and 146 of, and paragraphs 27 and 28 of Schedule 13 and part 3 of Schedule 23 to, the Tribunals, Courts and Enforcement Act 2007 (c. 15).

(7) Section 20 was amended by paragraph 4 of Schedule 15 to the Planning and Compensation Act 1991 and S.I. 2009/1307.

SCHEDULE 3

Article 25

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Number of land shown on the land plan</i>	<i>(2)</i> <i>Purposes for which temporary possession may be taken</i>
01	Construction of permanent hard standing on that land
02, 09 10, 11, 14, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, 28, 31, 32, 40	Construction access and working site
04, 42, 49	Construction of permanent works on that land to tie in differing levels

SCHEDULE 4

Article 36

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc., on land acquired

1.—(1) Subject to the following provisions of this paragraph, sections 271 to 274(8) (extinguishment of rights of statutory undertakers etc.) of the 1990 Act apply in relation to any land which has been acquired under this Order, or which is held by the Executive and is appropriated or used (or about to be used) by it for the purposes of this Order or for purposes connected with this Order; 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(9), which provide for the payment of compensation) have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1)—

- (a) references to the appropriate Minister are references to the Secretary of State;
- (b) references to the purpose of carrying out any development with a view to which land was acquired or appropriated are references to the purpose of carrying out the authorised works; and
- (c) references to land acquired or appropriated as mentioned in section 271(1) of the 1990 Act are references to land acquired, appropriated or used as mentioned in sub-paragraph (1).

(3) Where any apparatus of public utility undertakers or of an operator of an electronic communications code network is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-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 Executive 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.

(8) Section 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(9) Section 279(3) was amended by paragraph 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.

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(4) Sub-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 entitled to recover from the Executive 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.

(5) The provisions of the 1990 Act mentioned in sub-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 (including that Part as applied by article 3).

(6) In this paragraph—

“electronic communications code” means the code set out in Schedule 2 to the Telecommunications Act 1984⁽¹⁰⁾;

“electronic communications code network” means an electronic communications network within the meaning of the Communications Act 2003⁽¹¹⁾ to which the electronic communications code applies; and

“public utility undertakers” has the same meaning as in the Highways Act 1980⁽¹²⁾.

Application of electronic communications code

2.—(1) Paragraph 21 of the electronic communications code does not apply for the purposes of the Order works to the extent that such works are regulated by Part 11 of the 1990 Act, sections 84 and 85 of the 1991 Act (or regulations made under section 85 of that Act) or sub-paragraph (3).

(2) Paragraph 23 of the electronic communications code applies for the purposes of the Order works, except—

- (a) in so far as such works are regulated by the 1991 Act or any regulation made under that Act; or
- (b) where the Executive exercises a right under subsection (4)(b) of section 272 of the 1990 Act or under an order made under that section to remove apparatus.

(3) The temporary stopping up, alteration or diversion of any highway under article 11 (temporary stopping up of streets) does not affect any right of an operator of an electronic communications code network under paragraph 9 of the electronic communications code in respect of any apparatus which at the time of the stopping up or diversion is in the highway.

(4) In this paragraph—

“apparatus” has the same meaning as in Part 3 of the 1991 Act; and

“electronic communications code” and “electronic communications code network” have the same meanings as in paragraph 1(6).

⁽¹⁰⁾ 1984 c. 12; Schedule 2 was amended by section 190 of, and paragraph 68 of Schedule 25 and part 1 of Schedule 27 to, the Water Act 1989 (c. 15), section 112(4) of, and Schedule 18 to, the Electricity Act (c. 29), paragraphs 113-115 of Schedule 8 and Schedule 9 to the 1991 Act, section 107(2) of, and Schedule 4 to, the Arbitration Act 1996 (c. 23), section 25(1) of, and paragraph 22 of Schedule 3 to, the Trusts of Land and Appointment of Trustees Act 1996 (c. 47), section 406(7) of, and Schedule 3, paragraph 75 of Schedule 17 and Schedule 19 to, the Communications Act 2003 (c. 21), section 80(3) of and part 2 of Schedule 22 to, the Marine and Coastal Access Act 2009 (c. 23), S.I. 1993/3160, S.I. 2006/1177 and S.I. 2009/1307.

⁽¹¹⁾ 2003 c. 21.

⁽¹²⁾ 1980 c. 66.

SCHEDULE 5

Article 37

EXISTING AGREEMENTS

<i>(1)</i>	<i>(2)</i>
<i>Party to agreement</i>	<i>Date of agreement</i>
Aquila Networks PLC (now Western Power Distributions (West Midlands) PLC)	2nd January 2004
Argent Estates Limited	15th July 2004
Carlton Television Limited	14th August 2003
Hortellux Limited and Hortons' Estate Limited	26th January 2004
Hyatt Regency Birmingham Limited	15th December 2003
Kenmore Quayside Limited and Kenmore Property Group Limited	1st December 2003
NTL (Broadband) NTL Group Limited	10th February 2004
Radovan Vuckovic and Wolf's Limited	7th June 2004
Royal Mail PLC (now Royal Mail Group Limited) and Post Office Limited	5th January 2004
Scottish Mutual Assurance plc	10th March 2004
Severn Trent Water Limited	5th January 2004
Transco PLC (now National Grid Gas PLC)	14th June 2004

SCHEDULE 6

Article 46

PROTECTIVE PROVISIONS FOR NETWORK RAIL

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

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 amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8(13) (licences) of the 1993 Act;

“Network Rail” means Network Rail Infrastructure Limited (company registration number 02904587) whose registered office is at 1 Eversholt Street, London, NW1 2DN and any

(13) Section 8 was amended by paragraph 3 of Schedule 20 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 1 of Schedule 13(1) to the Railways Act 2005 (c. 14) and paragraph 4 of Schedule 17 to the Transport Act 2000 (c. 38). There are other amendments not relevant to this Order.

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associated company of Network Rail 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 1159 (meaning of subsidiaries etc.) of the Companies Act 2006⁽¹⁴⁾) 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 1993 Act) or station lease;

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

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment;

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

3.—(1) The Executive must not exercise the powers conferred by article 18 (power to survey and investigate land) or the powers conferred by section 11(3) (powers of entry) 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 Executive must 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 Executive must not under the powers conferred by this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(4) The Executive must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of telecommunications code system operators: preliminary notices) of the 1990 Act, as applied by Schedule 4, 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.

(5) Where Network Rail is asked to give its consent or agreement pursuant to sub-paragraphs (1), (2), (3) or (4), such consent or agreement must not be unreasonably withheld but may be given subject to reasonable conditions.

4.—(1) The Executive must, 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 must 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) must not be unreasonably withheld, and if by the end of the period of 56 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 disapproval the engineer is deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the Executive that Network Rail desires itself

(14) 2006 c. 46.

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 Executive desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Executive 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 Executive.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion must 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 those railways (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 are to be constructed by Network Rail or by the Executive, if Network Rail so desires, and such protective works are to be carried out at the expense of the Executive in either case with all reasonable dispatch and the Executive must not commence the construction of the specified works until the engineer has notified the Executive that the protective works have been completed to the engineer's reasonable satisfaction.

5.—(1) Any specified work and any protective works to be constructed under paragraph 4(4) must, 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 4(1);
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer; and
- (c) in such manner as to cause as little damage as is possible to railway property and as little interference as may be with the conduct of traffic on the railways of Network Rail,

and if any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the Executive must, regardless of any such approval, make good such damage and must 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.

(2) The Executive must give to the engineer no less than 180 days' notice of its intention to commence the construction of a specified work and must give, except in emergency (when it must give such notice as may be reasonably practicable), 90 days' notice of its intention to carry out any works for the maintenance or repair of a specified work in so far as such work of repair or maintenance may affect railway property.

(3) Nothing in this Schedule imposes any liability on the Executive 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 Executive or its servants, contractors or agents.

6. The Executive must—

- (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 the engineer may reasonably require with regard to a specified work or the method of constructing it.

7. Network Rail must at all times afford reasonable facilities to the Executive and its agents for access to any works carried out by Network Rail under this Schedule during their construction and

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must supply the Executive with such information as it may reasonably require with regard to such works or the method of constructing them.

8.—(1) If any permanent or temporary alterations or additions to railway property, or to any protective works under paragraph 4(4), are reasonably necessary in consequence of the construction of a specified work such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Executive reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the Executive must 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 Executive, Network Rail gives notice to the Executive 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 Executive decides that that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the Executive must, regardless of any such approval of a specified work under paragraph 4(1), 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 must, in respect of the capitalised sums referred to in this paragraph and paragraph 9(a) provide such details of the formula by which those sums have been calculated as the Executive 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 must be set off against any sum payable by the Executive to Network Rail under this paragraph.

9. The Executive must 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 Executive as provided by paragraph 4(3) or in constructing any protective works under the provisions of paragraph 4(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the Executive and the supervision by the engineer of the construction of a specified work and otherwise in connection with the implementation of the provisions of this Schedule;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watch keepers and other persons whom it is 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.

10.—(1) In this paragraph—

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“EMP” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the Order works 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 Order works) 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.

(2) 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 4(1) for the relevant part of the Order works giving rise to EMI (unless the Executive has been given notice in writing before the approval of those plans of the intention to make such change) other than any change carried out by Network Rail as part of, or in consequence of, the Order works.

(3) Subject to sub-paragraph (5), the Executive must in the design and construction of the Order works take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

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

- (a) the Executive 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 subsequently must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 4(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 Executive all information in the possession of Network Rail reasonably requested by the Executive in respect of Network Rail’s apparatus identified under sub-paragraph (a); and
- (c) Network Rail must allow the Executive reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) 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 4(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of commercial operation of the Order works and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the Order works causes EMI then the Executive 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) immediately cease to use (or procure the cessation of use of) the Executive’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 (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the Executive must afford reasonable facilities to Network Rail for access to the Executive’s apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the Executive for access to Network Rail’s apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the Executive any additional material information in its possession reasonably requested by the Executive in respect of Network Rail’s apparatus or such EMI.

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(8) Where Network Rail approves modifications to Network Rail's apparatus under sub-paragraph (5) or (6)—

- (a) Network Rail must allow the Executive reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the Executive in accordance with paragraph 5.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 14(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 (6) applies.

(10) For the purpose of paragraph 9(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 45 (arbitration) to an arbitrator to be agreed is to be read as a reference to an arbitrator being a member of the Institution of Electrical Engineers.

11.—(1) 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 Executive 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 Executive must, 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.

(2) If at any time after the completion of a specified work, being a work vested in Network Rail, the Executive gives notice to Network Rail informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of the authorised tramway, Network Rail must, 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 the authorised tramway.

12. The Executive must 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 has first consulted Network Rail and it must 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.

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, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Executive, are to be repaid by the Executive to Network Rail.

14.—(1) The Executive must 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 of a specified work; or
- (b) by reason of any act or omission of the Executive or of any person in its employ or of its contractors or others whilst engaged upon a specified work,

and the Executive must indemnify 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 Executive or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the supervision of the engineer does 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 Executive from any liability under the provisions of this Schedule.

(2) Network Rail must give the Executive reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the Executive, such consent not to be unreasonably withheld.

(3) The sums payable by the Executive under sub-paragraph (1) must 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 must 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 is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator under 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 sub-paragraph (1); and

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

15. Network Rail must, on receipt of a request from the Executive, from time to time provide the Executive free of charge with written estimates of the costs, charges, expenses and other liabilities for which the Executive 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 Executive to assess the reasonableness of any such estimate or claim made or to be made under this Schedule (including any claim relating to those relevant costs).

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

17. The Executive 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 Executive 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 Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

18. Any difference between Network Rail and the Executive arising under this Schedule is to be referred to arbitration under article 45 (arbitration).