

SCHEDULES

SCHEDULE 1

Articles 5(1) and 6

SCHEDULED WORKS

In the County of Essex, in Thurrock Borough at Shellhaven, Stanford le Hope—

Work No. 1A—A railway (2,540 metres in length) commencing 420 metres south-east of Shell Haven Refinery Entrance Gate 1, passing eastwards for 1,300 metres across the services crossing Work No. 14 on the level and crossing Works Nos. 15, 16, 17, 18, 19, 13, 20 and 21 on the level then turning and passing south-eastwards for 550 metres crossing Works No. 22 on the level then turning southwards for 600 metres and passing junctions with railways (Works Nos. 23, 24A, 24B, 25A, 25B, 1C and 1D) then crossing Work No. 26 on the level and terminating by a junction with the proposed new alignment for Thameshaven, Branch Line approximately 500 metres west of the existing Thameshaven station;

Work No. 1B—A railway (2,540 metres in length) commencing 420 metres south-east of Shell Haven Refinery Entrance Gate 1, passing eastwards for 1,300 metres across the services crossing (Work No. 14) and crossing Works Nos. 15, 16, 17, 18, 19, 13, 20 and 21 on the level then turning and passing south-eastwards for 550 metres and crossing Work No. 22 on the level then turning southwards for 600 metres and passing junctions with railways (Works Nos. 23, 24A, 24B, 25A, 25B, 1C and 1D) and then crossing Work No. 26 on the level and terminating by a junction with the proposed new alignment for Thameshaven Branch Line approximately 500 metres west of the existing Thameshaven station;

Work No. 1C—A railway (265 metres in length) commencing at chainage 4,400 metres on Works Nos. 1A and 1B and passing south-westwards to, and terminating by, a junction with Work No. 1D 85 metres before the junction with the existing Thameshaven Branch Line;

Work No. 1D—A railway (350 metres in length) commencing at chainage 4,400 metres on Works Nos. 1A and 1B and passing south-westwards to, and terminating by, a junction with the existing Thameshaven Branch Line approximately 500 metres west of the existing Thameshaven station;

Work No. 2—A service crossing (30 metres in length), forming a crossing of Works Nos. 25A, 25B and 25C on the level, commencing at a point 5 metres north of the railway (Work No. 25A) at chainage 150 metres, passing southwards and terminating at a point 5 metres south of Work No. 25C;

Work No. 3—A crossing (30 metres in length), forming a road crossing of Works Nos. 25A, 25B and 25C on the level, commencing at a point 5 metres north of the railway (Work No. 25A) at chainage 775 metres, passing southwards and terminating at a point 5 metres south of Work No. 25C;

Work No. 4—A service crossing (30 metres in length), forming a crossing of Works Nos. 25A, 25B and 25C on the level, commencing at a point 5 metres north of the railway (Work No. 25A) at chainage 1,075 metres, passing southwards and terminating at a point 5 metres south of Work No. 25C;

Work No. 5—A crossing (30 metres in length), forming an access crossing of Works Nos. 25A, 25B and 25C on the level, commencing at a point 5 metres north of the railway (Work No. 25A) at chainage 1,400 metres, passing southwards and terminating at a point 5 metres south of Work No. 25C;

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Work No. 6—A crossing (30 metres in length) forming an access crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 250 metres, passing south and terminating at a point 5 metres south of Work No. 24C;

Work No. 7—A service crossing (30 metres in length) forming a crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 425 metres, passing southwards and terminating at a point 5 metres south of Work No. 24C;

Work No. 8—A service crossing (30 metres in length) forming a crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 575 metres, passing southwards and terminating at a point 5 metres south of Work No. 24C;

Work No. 9—A service crossing (30 metres in length) forming a crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 975 metres, passing southwards and terminating at a point 5 metres south of Work No. 24C;

Work No. 10—A service crossing (30 metres in length) forming a crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 1,175 metres, passing southwards and terminating at a point 5 metres south of Work No. 24C;

Work No. 11—A crossing (30 metres in length) forming a crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 1,575 metres, passing southwards and terminating at a point 5 metres south of Work No. 24C;

Work No. 12—A service crossing (30 metres in length) forming a crossing of Works Nos. 24A, 24B and 24C on the level, commencing at a point 5 metres north of the railway (Work No. 24A) at chainage 1,775 metres, passing southwards and terminating at a point 5 metres south of Work No. 24C;

Work No. 13—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 3,119 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;

Work No. 14—A service crossing (30 metres in length) forming a crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 2,225 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;

Work No. 15—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 2,315 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;

Work No. 16—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 2,455 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;

Work No. 17—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 2,750 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;

Work No. 18—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 2,805 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;

Work No. 19—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 2,925 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;

Work No. 20—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 3,320 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;

Work No. 21—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north of the railway (Work No. 1A) at chainage 3,365 metres, passing southwards and terminating at a point 10 metres south of Work No. 1B;

Work No. 22—A crossing (30 metres in length) forming a road crossing of Works Nos. 1A and 1B on the level, commencing at a point 10 metres north east of the railway (Work No. 1A) at chainage 3,780 metres, passing south-westwards and terminating at a point 10 metres south-west of Work No. 1B;

Work No. 23—A railway (150 metres in length), forming a twin track junction connecting to the existing line which runs to the east of the aviation fuel storage depot, commencing with a turnout from the railway (Works Nos. 1A and 1B) at chainage 4,165 metres, passing northwards and terminating 30 metres east of the aviation fuel storage depot;

Work No. 24A—A railway (2,067 metres in length), commencing at a point 100 metres north-east of the existing Bitumen plant, passing eastwards across new level crossings (Works Nos. 6, 27 and 11) and new service crossings (Works Nos. 7, 8, 9, 10 and 12) on the level and terminating at a junction with Works Nos. 1A and 1B;

Work No. 24B—A railway (2,067 metres in length), commencing at a point 100 metres north-east of the existing Bitumen plant, passing eastwards across new level crossings (Works Nos. 6, 27 and 11) and new service crossings (Works Nos. 7, 8, 9, 10 and 12) on the level and terminating at a junction with Works Nos. 1A and 1B;

Work No. 24C—A railway (1,815 metres in length), commencing at a point 100 metres north-east of the existing Bitumen plant, passing eastwards across new level crossings (Works Nos. 6, 27 and 11) and new service crossings (Works Nos. 7, 8, 9, 10 and 12) on the level and terminating at a point 38 metres east of the service crossing (Work No. 12);

Work No. 25A—A railway (1,877 metres in length), commencing at a point 250 metres south-east of the existing Bitumen plant, passing eastwards across new level crossings (Works Nos. 28, 3 and 5) and new service crossings (Works Nos. 2 and 4) on the level and terminating at chainage 1,877 metres by a junction with the Works Nos. 1A and 1B at chainage 4,332 metres;

Work No. 25B—A railway (1,877 metres in length), commencing at a point 250 metres south-east of the existing Bitumen plant, passing eastwards across new level crossings (Works Nos. 28, 3 and 5) and new service crossings (Works Nos. 2 and 4) on the level and terminating at chainage 1,877 metres by a junction with the Works Nos. 1A and 1B at chainage 4,332 metres;

Work No. 25C—A railway (1,621 metres in length), commencing at a point 250 metres south-east of the existing Bitumen plant, passing eastwards across new level crossings (Works Nos. 28, 3 and 5) and new service crossings (Works Nos. 2 and 4) on the level, passing eastwards and terminating at chainage 1,621 metres;

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Work No. 26—A crossing (40 metres in length), forming a road across Works Nos. 1A, 1B, 1C and 1D on the level, commencing at a point 36 metres north-west of the railway (Work No. 1A) at chainage 4,558 metres, passing south-eastwards and terminating at a point 4 metres south-east of the railway (Works Nos. 24A, 24B and 24C) at chainage 168 metres;

Work No. 27—A crossing (40 metres in length), forming a road across Works Nos. 24A, 24B and 24C on the level, commencing at a point 10 metres north of the railway (Work No. 24A) at chainage 810 metres, passing southwards and terminating at a point 10 metres south of Work No. 24C;

Work No. 28—A crossing (30 metres in length), forming a road across Works Nos. 25A, 25B and 25C on the level, commencing at a point 5 metres north of the railway (Work No. 25C) at chainage 620 metres, passing southwards and terminating at a point 5 metres south of Work No. 25A;

Work No. 29A—A railway (1,024 metres in length), commencing at a point 420 metres to the south of the existing Bitumen plant by a junction with the proposed Thameshaven branch line, passing eastwards and terminating at a junction with the proposed Thameshaven branch line at chainage 1,024 metres;

Work No. 29B—A railway (928 metres in length), commencing at chainage 100 metres on the line of, and to the east of, the commencement of Work No. 29A, passing eastwards and terminating at chainage 928 metres on the lines of Work No. 29A;

Work No. 29C—A railway (289 metres in length), commencing on the existing Thameshaven Branch line and terminating at chainage 225 metres on the line of Work No. 29A;

Work No. 29D—A railway (230 metres in length), commencing at chainage 895 on the line of Work No. 29A and terminating on the existing Thameshaven Branch line;

Work No. 30A—A railway (470 metres in length), commencing at a point 435 metres to the south of the Bitumen Plant forming a junction with the proposed Thameshaven Branch line, then turning north-eastwards for 300 metres then eastwards and terminating at the commencement of Works Nos. 25A, 25B and 25C;

Work No. 30B—A railway (470 metres in length), commencing at a point 435 metres to the south of the Bitumen Plant forming a junction with the proposed Thameshaven Branch line, then turning north-eastwards for 300 metres then eastwards and terminating at the commencement of Works Nos. 25A, 25B and 25C;

Work No. 30C—A railway (175 metres in length), commencing on the existing Thameshaven Branch line, passing north-eastwards to and terminating at chainage 166 metres on Works Nos. 30A and 30B; and

Work No. 30D—A railway (175 metres in length), commencing on the existing Thameshaven Branch line, passing north-eastwards to and terminating at chainage 166 metres on Works Nos. 30A and 30B.

SCHEDULE 2

Article 20

FOR THE PROTECTION OF NETWORK RAIL

1.—(1) For the protection of Network Rail the following provisions shall, unless otherwise agreed in writing between the Promoter and Network Rail, have effect—

(2) In this Schedule—

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

“the engineer” means an engineer to be appointed by Network Rail for the purpose in question;
“plans” includes sections, designs, drawings, specifications, soil reports, calculations and descriptions (including descriptions of methods of construction), staging proposals and programmes;

“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⁽¹⁾) 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;

“railway property” means any railway belonging to Network Rail and any works, apparatus and equipment belonging to Network Rail connected therewith and includes any land held or used by Network Rail for the purposes of such railway or works, apparatus or equipment;

“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 of the specified works or of any such act as is mentioned in paragraph 19;

“specified works” means so much of the authorised works as may be situated upon, across, under, over or within 15 metres of, or may in any way affect, railway property; 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⁽²⁾.

- (a) (3) (a) The Promoter shall not under the powers conferred by this Order acquire or enter upon, take or use whether temporarily or permanently any railway property or acquire any new rights over any railway property unless such acquisition, entry or use is with the consent of Network Rail.
- (b) Where Network Rail is asked to give its consent pursuant to sub-paragraph (a), such consent shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

2. The Promoter shall, before commencing construction of any of the specified works, supply to Network Rail proper and sufficient plans for the reasonable approval of the engineer and shall not commence such construction of the specified works until plans of those works have been approved in writing by the engineer or settled by arbitration.

3. The approval of the engineer under paragraph 2 shall not be unreasonably withheld or delayed 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 his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

4. 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 Promoter that Network Rail desires itself to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of railway property, the safe operation of traffic on the railways of Network Rail or the services of train operators using the same then, if the Promoter desires such part of the specified works to be constructed, Network Rail shall construct it with all reasonable dispatch on behalf of, and to the reasonable satisfaction of, the Promoter in accordance with the plans approved or deemed to be approved or settled as aforesaid.

(1) 1985 c. 6.
(2) 1993 c. 43.

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5. When signifying his approval or disapproval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of construction of the specified works to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Network Rail or the services of train operators using the same (including any relocation of works, apparatus and equipment necessitated by the specified works) 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 with all reasonable dispatch, or if Network Rail so desires, such protective works shall be carried out by the Promoter at its own expense and the Promoter shall not commence the construction of the specified works until the engineer has notified the Promoter that the protective works have been completed to his reasonable satisfaction.

6. The Promoter shall give to the engineer not less than 180 days' notice of its intention to commence the construction of any of the specified works and also, except in emergency (when it shall give such notice as may be reasonably practicable), of its intention to carry out any works for the maintenance or repair of the specified works in so far as such work of repair or maintenance may affect or interfere with railway property.

7. Any specified work and any protective works to be constructed by virtue of paragraph 5 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 this Schedule;
- (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 possible to railway property and as little interference as may be reasonably practicable with the conduct of traffic on the railways of Network Rail,

and, if any damage to railway property or any such interference or obstruction shall be caused by the carrying out of the specified works or protective works, the Promoter 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.

8. Nothing in paragraph 7 shall impose any liability on the Promoter with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents.

9. The Promoter shall—

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

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

11.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of the specified works, any protective works under paragraph 5 or during a period of 12 months after the completion of the specified works 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 Promoter reasonable notice of its intention

to carry out such alterations or additions, the Promoter shall pay to Network Rail the reasonable cost thereof including, in respect of any such permanent alterations and additions, a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations and additions.

(2) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions referred to in sub-paragraph (1) a capitalised sum representing such saving shall be set off against any sum payable by the Promoter to Network Rail under sub-paragraph (1).

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

- (a) in constructing any part of the specified works on behalf of the Promoter as provided by paragraph 4 or in constructing any protective works under the provisions of paragraph 5 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 supervision by the engineer of the construction of the specified works 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, 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 the specified works;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, be required to be imposed by reason or in consequence of the construction or failure of the specified works, 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 reasonable necessary by reason or in consequence of the construction or failure of the specified works.

13. 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 Promoter informing it that the state of maintenance of the specified work appears to be such as may adversely affect the operation of railway property, the Promoter shall, on receipt of such notice, take steps as may be reasonably necessary to put the specified works in such state of maintenance as not to adversely affect railway property.

14. The Promoter 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.

15. 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 Promoter, shall be repaid by the Promoter to Network Rail.

16. The Promoter 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—

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

and the Promoter shall indemnify Network Rail from and against all claims and demands arising out of or in connection with the specified works 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 Promoter 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 employment or of its contractors or agents) excuse the Promoter from any liability under the provisions of this Schedule.

17. Network Rail shall give to the Promoter reasonable notice of any claim or demand under paragraph 16 and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Promoter.

18.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the Promoter’s apparatus where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus;

“the Promoter’s apparatus” means any electric lines, circuits, wires, apparatus, equipment and other works of any description owned or used (or intended to be used) by the Promoter for the purpose of the authorised works; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment 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 shall apply 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 2 for the relevant part of the authorised works giving rise to EMI (unless the Promoter 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 authorised works.

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

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

- (a) the Promoter shall 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 shall continue to consult with Network Rail (both before and after formal submission of plans under paragraph 2) to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail shall make available to the Promoter all information in the possession of Network Rail reasonably requested by the Promoter in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail shall allow the Promoter 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 shall not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of

their execution shall be selected in Network Rail's reasonable discretion and in relation to such modifications paragraph 2 shall have effect subject to this sub-paragraph.

(6) If at any time prior to the opening of authorised works for the passage of railway traffic and notwithstanding any measures adopted pursuant to sub-paragraph (3) above, the testing or commissioning of authorised works causes EMI, then the Promoter shall 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 Promoter'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 Promoter shall afford reasonable facilities to Network Rail for access to the Promoter's apparatus in the investigation of such EMI;
- (b) Network Rail shall afford reasonable facilities to the Promoter for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail shall make available to the Promoter any additional material information in its possession reasonably requested by the Promoter in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to apparatus pursuant to sub-paragraphs (5) or (6)—

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

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 16 shall apply 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 sub-paragraph 12(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 25 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Engineering and Technology.

19.—(1) The sums payable by the Promoter under paragraph 16 shall include a sum equivalent to the relevant costs.

(2) Subject to the terms of any agreement between Network Rail and the relevant train operators 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 (1) which relates to the relevant costs of that train operator.

(3) The obligation under sub-paragraph (1) to pay to 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 (1).

20. Subject to paragraph 18(11) any difference arising between the Promoter and Network Rail under this Schedule shall be referred to and settled by arbitration under article 25 (arbitration).

SCHEDULE 3

Article 21

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

1. For the protection of the Agency the following provisions shall, unless otherwise agreed in writing between the Promoter and the Agency, have effect.

Definitions applying to this Schedule

2. In this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal; and “construct” and “constructed” shall be construed accordingly;

“damage” includes scouring, erosion and environmental damage and “damaged” shall be construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“the fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, habitat or food of such fish;

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

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows (whether or not the flow is intermittent) except a public sewer.

Pre-conditions to commencing any specified work affecting a drainage work

3.—(1) Before beginning to construct any specified work, the Promoter shall submit to the Agency plans of the work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 14.

(3) Any approval of the Agency required under this paragraph—

- (a) shall not be unreasonably withheld or delayed;
- (b) shall be deemed to have been given if it is neither given nor refused in writing (and in the case of a refusal, accompanied by a statement of the grounds for refusal) within 42 days of the submission of the plans for approval; and
- (c) may be given subject to such reasonable conditions or requirements as the Agency may impose—

- (i) for the protection of any drainage work,
- (ii) for the protection of the fishery,
- (iii) for the protection of water resources,
- (iv) for the prevention of flooding or pollution, or
- (v) in the discharge of its environmental and recreational duties.

4. Without prejudice to the generality of paragraph 3, the conditions or requirements which the Agency may make under that paragraph include—

- (a) conditions as to the time and the manner in which any other work or operation is to be carried out;
- (b) conditions requiring the Promoter at its own expense—
 - (i) to provide or maintain means of access for the Agency;
 - (ii) to provide compensatory habitat for habitat lost or damaged by the specified works;
 - (iii) to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased by reason of any specified work; and
 - (iv) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur during and as a result of the construction of the specified works.

5.—(1) Subject to sub-paragraph (2), any specified work, and all compensatory habitat and protective works required by the Agency under paragraph 4, shall be constructed—

- (a) within such period (if any) as the Agency may approve at the time of approval or upon an application by the Promoter thereafter (such approval not to be unreasonably withheld or delayed);
- (b) in accordance with the plans approved or deemed to have been approved or settled under this Schedule; and
- (c) to the reasonable satisfaction of the Agency,

and the Agency shall be entitled by its officer to water and inspect the construction of such works.

(2) The Promoter shall give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If any part of the specified works comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require the Promoter, at the Promoter's own expense, to comply with the requirements of this Schedule or (if the Promoter so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent as the Agency reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the Promoter, it has failed to begin taking steps to comply with the requirements of the notice and thereafter complete them within such reasonable period as may be specified in such notice, the Agency may execute the works specified

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in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the Promoter.

(5) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in a case of emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

Survey of any drainage work liable to be affected by a specified work

6. Before commencing the construction of a specified work the Promoter shall procure at its expense, in liaison with and to the reasonable satisfaction of the Agency, a survey of any drainage work liable to be affected by that specified work.

Maintenance by the Promoter of any drainage work liable to be affected by a specified work

7.—(1) Subject to sub-paragraph (2), the Promoter shall, from the commencement of the construction of the specified works and except to the extent that any approval given by the Agency under this Schedule permits otherwise, maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land owned by the Promoter or which it otherwise has control of, or is in occupation of, for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of this Order or is already in existence.

(2) The obligation imposed on the Promoter under sub-paragraph (1) does not apply where the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers of this Order from doing so.

(3) If any drainage work referred to in sub-paragraph (1) is not maintained in good repair and condition and free from obstruction the Agency may by notice in writing require the Promoter to repair and restore the work, or any part thereof, of (if the Promoter so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site (including sea defences) to its former condition, to such extent and within such limits as the Agency reasonably requires.

(4) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (3) on the Promoter, the Promoter has failed to begin taking steps to comply with the reasonable requirements of the notice and thereafter completed them within such reasonable period as may be specified in the notice, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Promoter.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (3), the Agency shall not except in a case of emergency exercise the powers of sub-paragraph (4) until the dispute has been finally determined.

Impairment of efficiency of drainage work for flood defence

8. If by reason of the construction of any specified work, or of the failure of any such work, or of the Promoter to maintain it, the efficiency of any drainage work for flood defence purposes is impaired, or that work is otherwise damaged, such impairment or damage shall be made good by the Promoter to the reasonable satisfaction of the Agency and if the Promoter fails to do so within such reasonable period as the Agency may require by notice in writing to the Promoter, the Agency may make good the same and recover from the Promoter the expense reasonably incurred by it in so doing.

Protection of fishery

9.—(1) The Promoter shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the Promoter requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If, within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Promoter fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Promoter the expense reasonably incurred by it in so doing.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the Promoter the reasonable cost of so doing provided that notice specifying those steps is served on the Promoter as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity as to costs and expenses

10. The Promoter shall indemnify the Agency in respect of all reasonable and proper costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Schedule; and
- (b) in the inspection of the construction of the specified works or any compensatory habitat or protective works required by the agency under this Schedule.

11.—(1) Without prejudice to the other provisions of this Schedule, the Promoter shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss, which may be made or taken against, or recovered from or incurred by the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains or watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the Promoter, its contractors, agents or employees whilst engaged upon the specified works.

(2) The Agency shall give to the Promoter 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 Promoter, which shall not be unreasonably withheld.

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No relief of liability

12. The fact that any work or thing has been executed or done by the Promoter in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the Promoter from any liability under the provisions of this Schedule.

Approvals deemed and not deemed

13.—(1) For the purposes of section 109 of the Water Resources Act 1991⁽³⁾ (as to structures in, over or under watercourses) as applying to the construction of any specified work, any approval given or deemed to be given by the Agency under this Schedule with respect to such construction shall be deemed also to constitute a consent under that section.

(2) Except as otherwise provided by this Schedule, nothing in this Order shall prejudice or affect in their application to the Agency the powers, rights, jurisdictions and obligations conferred, arising or imposed under the Land Drainage Act 1991⁽⁴⁾, the Salmon and Freshwater Fisheries Act 1975⁽⁵⁾, the Water Resources Act 1991 or any enactment, byelaw or regulation relating to the Agency.

Arbitration

14. Any dispute arising between the promoter and the Agency under this Schedule shall, if the parties agree, be determined by arbitration in the London Court of International Arbitration and in accordance with its rules, but shall otherwise be referred to the Secretary of State for Transport and the Secretary of State for the Environment, Food and Rural Affairs, acting jointly.

(3) 1991 c. 57.
(4) 1991 c. 59.
(5) 1975 c. 51.