

## SCHEDULES

### SCHEDULE 1

Article 2

#### AUTHORISED WORKS

In the following table—

- “the 1835 Act” means the Great Western Railway Act 1835(1);
- “the 1837 Act” means the Great Western Railway Act 1837(2);
- “the 1845 Act” means the Berks and Hants Railway Act 1845(3);
- “the 1853 Act” means the Great Western Railway Branches Act 1853(4);
- “the 1854 Act” means the Great Western Railway (Berks and Hants, and Wilts, Somerset and Weymouth) Act 1854(5);
- “the 1857 Act” means the Reading Railways Junction Act 1857(6);
- “the 1883 Act” means the Great Western Railway Act 1883(7);
- “the 1890 Act” means the Great Western Railway Act 1890(8); and
- “the 1845 Clauses Act” means the Railways Clauses Consolidation Act 1845(9).

| <i>(1)</i>                                            | <i>(2)</i>                                                  | <i>(3)</i>                                                                                                                               |
|-------------------------------------------------------|-------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| <i>Number of land shown on land plans</i>             | <i>Description of work</i>                                  | <i>Authorising Act</i>                                                                                                                   |
| 1 to 4, 6 to 14, 28, 41, 46 to 50, 52, 53, 55, 75, 78 | Bridge works at Wigmore Lane, Littlejohns Lane and Cow Lane | Section 8 of the 1835 Act as applied by the 1837 Act and section 16 of the 1845 Clauses Act as incorporated with the 1883 and 1890 Acts. |
| 5, 8, 15 to 25, 29 to 39, 75, 78                      | Viaduct works                                               | Section 8 of the 1835 Act as applied by the 1837 Act.                                                                                    |
| 41, 42, 45 to 50, 52, 53, 55, 56, 61, 68, 69, 75, 78  | Depot works                                                 | Section 8 of the 1835 Act as applied by the 1837 Act.                                                                                    |

- (1) 1835 c. cvii.
- (2) 1837 c. xci.
- (3) 1845 c. cxl.
- (4) 1853 c. cliii.
- (5) 1854 c. ccii.
- (6) 1857 c. xcvi.
- (7) 1883 c. cxci.
- (8) 1890 c. clix.
- (9) 1845 c. 20.

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| (1)<br><i>Number of land shown on land plans</i> | (2)<br><i>Description of work</i>                                                           | (3)<br><i>Authorising Act</i>                                                                                                            |
|--------------------------------------------------|---------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------|
| 71 to 74, 75, 78                                 | Bridge works at Caversham Road                                                              | Section 8 of the 1835 Act as applied by the 1837 Act and section 16 of the 1845 Clauses Act as incorporated with the 1883 Act.           |
| 65                                               | Widening of Hodsall Lane road bridge and new southern chord line                            | Section 16 of the 1845 Clauses Act as applied by the 1845 and 1854 Acts.                                                                 |
| 75, 77, 78                                       | Platform and retaining wall north of station and northern entrance                          | Section 8 of the 1835 Act as applied by the 1837 Act and section 16 of the 1845 Clauses Act as incorporated with the 1853 Act.           |
| 75, 78, 81 to 89, 94 to 96, 98, 99               | Retaining walls and extension of platform south of railway and works to Vastern Road bridge | Section 8 of the 1835 Act as applied by the 1837 Act and section 16 of the 1845 Clauses Act as incorporated with the 1853 and 1890 Acts. |
| 75, 78, 100 to 104, 106 to 111                   | Track work east of station                                                                  | Section 16 of the 1845 Clauses Act as incorporated with the 1857 and 1890 Acts.                                                          |

## SCHEDULE 2

Article 6

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 shall 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 prejudice to the generality of paragraph 1, the Land Compensation Act 1973(10) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(10) 1973 c.26.

(2) In section 44(1) (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) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there shall be 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 shall be substituted the words “a right over land consisting”;
- (b) for the word “severance” there shall be 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 shall be substituted the words “right proposed”; and
- (d) for the words “part is” there shall be substituted the words “right is”.

#### *Application of the 1965 Act*

**3.—**(1) The 1965 Act shall have 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 prejudice to the generality of sub-paragraph (1), Part 1 of the 1965 Act shall apply 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 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall 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 of the 1965 Act (provisions as to divided land) there shall be 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 Upper Tribunal (“the tribunal”); and

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- (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 Network Rail (Reading) (Land Acquisition) Order 2009<sup>(11)</sup> (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and 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 shall 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 shall 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.”.

**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),

shall 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.

**7.** Section 11 of the 1965 Act (powers of entry) shall be 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 shall 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 shall be modified correspondingly.

**8.** Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply 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.

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(11) [S.I.2009/2728](#).

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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) shall be 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.

SCHEDULE 3

Article 7

LAND IN WHICH ONLY NEW RIGHTS MAY BE ACQUIRED

| <i>(1)</i><br><i>Area</i> | <i>(2)</i><br><i>Number of land shown on land plans</i>                                                      |
|---------------------------|--------------------------------------------------------------------------------------------------------------|
| In the Borough of Reading | 5, 10, 12A, 15, 16, 19 to 25, 29 to 31, 33, 37, 53, 65, 78, 81, 87, 89, 94A, 95, 96, 98, 101 to 103 and 110. |

SCHEDULE 4

Article 10

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

| <i>(1)</i><br><i>Number of land shown on land plans</i>           | <i>(2)</i><br><i>Purpose for which temporary possession may be taken</i> | <i>(3)</i><br><i>Authorised work</i> |
|-------------------------------------------------------------------|--------------------------------------------------------------------------|--------------------------------------|
| 1, 2, 2A, 3 and 4                                                 | Worksite and access                                                      | Bridge works                         |
| 5                                                                 | Worksite and access                                                      | Viaduct                              |
| 6, 9 and 28                                                       | Access                                                                   | Bridge works                         |
| 8                                                                 | Worksite                                                                 | Bridge works                         |
| 10                                                                | Worksite and access                                                      | Bridge works                         |
| 12A                                                               | Worksite and access                                                      | Bridge works                         |
| 13 and 14                                                         | Worksite                                                                 | Bridge works                         |
| 15 and 16                                                         | Worksite and access                                                      | Viaduct                              |
| 17, 18, 19, 20, 21, 22, 23, 24, 25, 29, 30, 31, 33, 37, 38 and 39 | Worksite                                                                 | Viaduct                              |
| 41                                                                | Worksite and access                                                      | Bridge works and depot               |
| 45                                                                | Worksite                                                                 | Depot                                |
| 46, 47, 48 and 49                                                 | Worksite                                                                 | Bridge works and depot               |
| 50                                                                | Worksite                                                                 | Depot                                |
| 61                                                                | Access                                                                   | Depot                                |
| 70A                                                               | Worksite and access                                                      | Bridge works                         |

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| <i>(1)</i>                                     | <i>(2)</i>                                                 | <i>(3)</i>             |
|------------------------------------------------|------------------------------------------------------------|------------------------|
| <i>Number of land shown on land plans</i>      | <i>Purpose for which temporary possession may be taken</i> | <i>Authorised work</i> |
| 75 and 78                                      | Worksite                                                   | The authorised works   |
| 81 and 81A                                     | Worksite                                                   | Retaining wall         |
| 84A                                            | Worksite                                                   | Bridge works           |
| 86, 87, 94 and 94A                             | Worksite and access                                        | Retaining wall         |
| 89, 89A, 95 and 95A                            | Worksite and access                                        | Retaining wall         |
| 96, 96A and 98                                 | Worksite and access                                        | Retaining wall         |
| 97A                                            | Access                                                     | Retaining wall         |
| 100, 101, 104, 106, 107, 108, 109, 110 and 111 | Worksite                                                   | Trackwork              |

## SCHEDULE 5

Article 11

## LAND OVER WHICH TEMPORARY RIGHTS OF ACCESS MAY BE EXERCISED

| <i>(1)</i>                | <i>(2)</i>                                |
|---------------------------|-------------------------------------------|
| <i>Area</i>               | <i>Number of land shown on land plans</i> |
| In the Borough of Reading | 68A, 69A, 70, 79, 80, 92, 97 and 105.     |

## SCHEDULE 6

Article 18

## PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

**1.** Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers etc. and power of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by Network Rail 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) shall have effect accordingly.

**2.** In the provisions of the 1990 Act, as applied by paragraph 1, references to the appropriate Minister are references to the Secretary of State.

**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 1990 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 shall be entitled to recover from Network Rail 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.

4. Paragraph 3 shall 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,

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

5. The provisions of the 1990 Act mentioned in paragraph 1, as applied by that paragraph, shall not have effect in relation to apparatus as respects which Part 3 of the 1991 Act applies.

6. Nothing in this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

7. In this Schedule—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003<sup>(12)</sup>; and

“public utility undertakers” has the same meaning as in the Highways Act 1980<sup>(13)</sup>.

## SCHEDULE 7

Article 19

### PROTECTIVE PROVISIONS

1.—(1) For the protection of the undertakers referred to in this Schedule the following provisions shall, unless otherwise agreed in writing between Network Rail and the undertaker concerned, have effect.

(2) The provisions of Schedule 6 (provisions relating to statutory undertakers, etc.) shall not apply in relation to apparatus to which this Schedule applies.

2. In this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989<sup>(14)</sup>) belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) any mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and

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<sup>(12)</sup> 2003 c. 21.

<sup>(13)</sup> 1980 c. 66.

<sup>(14)</sup> 1989 c. 29.

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- (ii) any mains, pipes or other apparatus that are the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991<sup>(15)</sup>;
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104, and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in” in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(16)</sup>;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised works, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

**3.** This Schedule does not apply to apparatus in respect of which the relations between Network Rail and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

**4.** Regardless of any provision in this Order or anything shown on the land plans Network Rail shall not acquire any apparatus other than by agreement.

**5.—(1)** If, in the exercise of the powers conferred by this Order, Network Rail acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Schedule and any right of an undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, it shall give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) Network Rail shall, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and for the subsequent maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such

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<sup>(15)</sup> 1991 c. 56.

<sup>(16)</sup> 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c.45), and was further amended by section 76 of the Utilities Act 2000 c. 27.



apparatus is to be constructed, the undertaker in question shall, on receipt of a written notice to that effect from Network Rail, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of Network Rail under this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail or in default of agreement settled by arbitration in accordance with article 23 (arbitration).

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 23, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Network Rail gives notice in writing to the undertaker in question that it desires itself to execute any work to which this sub-paragraph applies, that work, instead of being executed by the undertaker, shall be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Sub-paragraph (6) applies to any part of any work necessary in connection with construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land of Network Rail.

(8) Nothing in sub-paragraph (6) shall authorise Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

**6.—**(1) Where, in accordance with the provisions of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 23 (arbitration).

(2) In settling those terms and conditions in respect of the alternative apparatus to be constructed in or along any railway of Network Rail, the arbitrator shall—

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to, the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by Network Rail in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by Network Rail to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**7.—**(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not

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been required by Network Rail under paragraph 5(2), Network Rail shall submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and an officer of the undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by the undertaker under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, paragraphs 1 to 6 shall apply as if the removal of the apparatus had been required by Network Rail under paragraph 5(2).

(5) Nothing in this paragraph shall preclude Network Rail from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) Network Rail shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and shall comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**8.—(1)** Subject to the following provisions of this paragraph, Network Rail shall repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) If in accordance with the provisions of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration to be necessary, then, if such placing involves cost in the construction of works under this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the normal course, be reduced by the amount which represents that benefit.

**9.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, Network Rail shall—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

(3) An undertaker shall give Network Rail reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of Network Rail, which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**10.** Nothing in this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.