

## SCHEDULES

### SCHEDULE 1

Articles 2 and 5

#### AUTHORISED DEVELOPMENT

A nationally significant infrastructure project as defined in sections 14 and 25 of the 2008 Act comprising—

##### **In Doncaster Metropolitan Borough**

**Work No.1** — The construction of a new permanent railway chord (centred on grid reference SE 58166 10443) (3,200 metres in length) commencing at a point on the existing Askern railway line at Owston Grange Farm No. 1 level crossing, running southwards along the eastern side of the said section of the Askern line on embankment, then a multi-span railway viaduct (246 metres in length) spanning Joan Croft Lane, the East Coast Main Line and Applehurst Chord railways, continuing on embankment curving south-eastwards along the eastern side of the Applehurst Chord railway before terminating at a point on the Skellow railway line 520 metres east of Applehurst Lane level crossing; including permanent way (rail tracks), railway switch and crossing track and the construction of temporary haul roads located adjacent to the embankment.

Associated development within the meaning of section 115(2) of the 2008 Act comprising—

**Work No.2** — Construction of permanent A19 junction widening (52 metres in length) on Rockley Lane (north side of junction), including the construction of a new kerb line and a new road surface within the amended road limits.

**Work No.3A** — Construction of permanent A19 junction widening (35 metres in length) on Holme Lane (north side of junction), including the construction of a new kerb line and a new road surface within the amended road limits.

**Work No.3B** — Construction of permanent A19 junction widening (60 metres in length) on Holme Lane (south side of junction) including the construction of a new kerb line and a new road surface within the amended road limits.

**Work No.4** — Construction of permanent road widening works commencing at a point 110 metres east of the junction of Storr's Lane with Holme Lane and terminating at a point 160 metres from its commencement point.

**Work No.5** — Temporary widening works (56 metres in length and 5.5 metres wide) to Owston Grange Farm No. 1 level crossing across Work No. 1 in order to accommodate construction traffic from both directions and permanent improvement to the approach gradients to the level crossing.

**Work No.6** — Construction of a new permanent land drain (375 metres in length) between the existing Askern railway line and the proposed new line, commencing at a point 357 metres south of Honey Lands Lane level crossing and terminating at a point 23 metres north of Joan Croft Lane, including a headwall at the Joan Croft Lane end.

**Work No.7** — Construction of new permanent drainage works (155 metres in length) on the north side of Joan Croft lane commencing at a point 29 metres north east of Middle Lane level crossing and terminating at a point 155 metres north east of its commencement, including placing the existing ditch in a culvert under the new viaduct, tying it into the proposed ditch and also connections into the proposed overbridge drainage and the provision of new manholes.

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**Work No.8** — Construction of permanent highway and overbridge (440 metres in length) over the East Coast Main Line railway commencing at the junction of Joan Croft Lane and Honey Lands Lane at a point 90 metres north west of Joan Croft level crossing, running first in a north-easterly direction, then in an easterly direction before running in a southerly direction and terminating at a point 176 metres from its commencement, including abutment and wing wall piling, road and toe drainage, the bridge superstructure (deck, abutments and wing walls), the earthworks associated with the embankment approaches and boundary fencing.

**Work No.9** — Construction of a new permanent underpass on Bell Croft Lane commencing at a point 120 metres north of the Applehurst Chord railway and terminating at a point 53 metres south of its commencement.

**Work No.10** — Construction of new permanent drainage works at Bell Croft Lane commencing at a point 53 metres north west of Bell Croft Lane and terminating at a point 103 metres south east of its commencement, including placing in culvert a drain (50 metres in length) under the embankment with two headwalls and placing in culvert an existing drain to tie into the proposed new ditch and culvert under the embankment (115 metres in length).

**Work No.11** — Construction of new permanent drainage (326 metres in length) to the south of the new railway and north of the existing Skellow railway commencing 173 metres to the east of Bell Croft Lane and terminating by the disused railway embankment.

**Work No.12** — Installation of a new permanent buried power cable in the existing verge commencing from a point 28 metres north of Applehurst level crossing, continuing along Applehurst Lane before turning eastwards into Sickle Croft Farm (located north east of Applehurst level crossing) and terminating at a point 355 metres from its commencement.

**Work No.13** — Widening works to Applehurst level crossing (50 metres in length and 6.5 metres wide) across Work No. 1 to accommodate haul road traffic from both directions,

and in connection with such works further associated development within the Order limits consisting of—

- (a) electrical equipment and signalling works;
- (b) ramps, means of access, footpaths and bridleways;
- (c) embankment, viaducts, aprons, abutments, shafts, foundations, retaining walls, drainage, wing walls, fencing and culverts;
- (d) works to alter the position of apparatus, including mains, sewers, drains and cables;
- (e) works to alter the course of, or otherwise interfere with a watercourse other than a navigable watercourse;
- (f) landscaping and other works to mitigate any adverse effects of the construction, maintenance or operation of the authorised development;
- (g) works for the benefit or protection of land affected by the authorised development;
- (h) works required for the strengthening, improvement, maintenance, or reconstruction of any streets; and
- (i) such other works, including working sites and works of demolition, as may be necessary or expedient for the purposes of or in connection with the construction of the authorised development and which fall within the scope of the environmental impact assessment.

## SCHEDULE 2

Article 4

### REQUIREMENTS

#### **Interpretation**

**1.** In this Schedule—

“the CR-E” means Network Rail’s Contract Requirements – Environment, Issue 5, April 2004, as set out in Volume I, Appendix E, of the environment statement; and

“stage” means a defined section or part of the authorised development, the extent of which is shown in a scheme submitted to and approved by the relevant planning authority under requirement 2 (stages of authorised development).

#### **Stages of authorised development**

**2.** No authorised development is to commence until a written scheme setting out all the stages of the authorised development has, after consultation with the highway authority, been submitted to, and approved in writing by, the relevant planning authority.

#### **In accordance with approved details**

**3.** The authorised development must be carried out in accordance with the design drawings unless otherwise agreed in writing by the relevant planning authority.

#### **Landscaping**

**4.—(1)** No stage of the authorised development is to commence until a written landscaping scheme for that stage has, after consultation with the relevant planning authority, been submitted to, and approved in writing by, the relevant planning authority.

(2) The submitted scheme must reflect the mitigation measures described in section 5.2 (Construction Phase Incorporated Mitigation) of Technical Appendix F (Landscape and Visual Amenity) to Volume II of the environmental statement.

(3) The landscape scheme must include details of—

- (a) location, number, species, size and planting density of any proposed planting;
- (b) cultivation, importing of materials and other operations to ensure plant establishment;
- (c) implementation timetables for all landscaping; and
- (d) temporary fencing that complies with current best practice to protect trees and hedgerows adjacent to the works.

#### **Implementation and maintenance of landscaping**

**5.—(1)** All landscaping work must be carried out in accordance with the scheme and implementation timetable approved under requirement 4 (landscaping).

(2) Any tree or shrub planted as part of an approved landscaping scheme that, within a period of 5 years after planting, is removed, dies or becomes, in the opinion of the relevant planning authority, seriously damaged or diseased, must be replaced in the first available planting season with a specimen of the same species and size as that originally planted, unless otherwise approved in writing by the relevant planning authority.

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### **Highway accesses**

6. No part of the authorised development, other than Works numbered 2, 3A, 3B, 4, 5 and 13, which requires road access for construction traffic from the west side of the East Coast Main Line, is to commence until—

- (a) for that part details of the siting, design and layout of any new or altered, permanent or temporary, access, and any temporary or permanent road improvements on Rockley Lane, Holme Lane and Storr Lane, and any temporary haul roads, have, after consultation with the relevant planning authority and local highway authority, been submitted to and approved in writing by the relevant planning authority; and
- (b) the approved highway alterations and improvements, including any altered or new accesses and any temporary haul roads, for that part have been implemented.

### **Archaeology**

7.—(1) No stage of the authorised development is to commence until for that stage a written scheme for the investigation of areas of archaeological interest identified at paragraph 5.2.1 (Incorporated Mitigation) of Technical Appendix E, (Historic Environment) to Volume II of the environmental statement has, after consultation with the relevant planning authority, been submitted to, and approved in writing by, the relevant planning authority.

(2) The scheme must identify areas where field work or a watching brief is required and the measures to be taken to protect, record or preserve any significant archaeological remains that may be found.

(3) Any archaeological works or watching brief carried out under the approved scheme must be by a suitably qualified person or body approved in writing by the relevant planning authority.

(4) Any archaeological works or watching brief must be carried out in accordance with the approved scheme.

### **Contract Requirements – Environment**

8.—(1) The authorised development must be carried out in accordance with the CR-E or as otherwise amended with the written agreement of the relevant planning authority. The mitigation measures set out in the environmental statement must be reflected in preparing any plan required by the CR-E.

(2) The Mandatory Environmental Requirements set out in section 5 of the CR-E in respect of—

- (a) 5.10 External Communications;
- (b) 5.13 Pollution Incident Control Plan (which must include a Construction Phase Surface Water Management Plan, as referred to in paragraph 5.2.1 (Incorporated Plan) of Technical Appendix J (Water Resources) to Volume II of the environmental statement); and
- (c) 5.17 Waste Management Plan (which must be prepared in accordance with The Site Waste Management Plans Regulations 2008(1)),

must not be agreed by Network Rail until they have been submitted to, and approved in writing by, the relevant planning authority.

(3) The following matters set out in section 6 (Particular Environmental Requirements) of the CR-E are mandatory—

- (a) 6.2 Environmental Design Management;
- (b) 6.3 Traffic Management Plan;

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(1) [S.I. 2008/314](#).

- (c) 6.4 Noise & Vibration Management Plan;
- (d) 6.6 Dust;
- (e) 6.7 Air Pollution;
- (f) 6.14 Boundaries; and
- (g) 6.15 Lighting.

(4) The dust, air pollution and lighting mitigation measures required by the CR-E must be incorporated into a Nuisance Management Plan. The Nuisance Management Plan and other plans required under section 6 of the CR-E must, after consultation with the relevant planning authority, be submitted to, and approved in writing by, the relevant planning authority.

(5) No stage of the authorised development is to be commenced until such of the plans or programmes required under sections 5.10, 5.13, 5.17, 6.2, 6.3, 6.4 of the CR-E and the Nuisance Management Plan as relate to that stage have been approved in writing by the relevant planning authority and those plans or programmes must be implemented as approved.

### **Ecological Management Plan**

9.—(1) No stage of the authorised development is to commence until for that stage a written ecological management plan reflecting the survey results and ecological mitigation and enhancement measures included in the environmental statement, in particular to accord with paragraph 5.2.1 of section 5 (Mitigation & Prediction of Effects) of Technical Appendix C (Ecology) to Volume II of the environmental statement, has been submitted to, and approved in writing by, the relevant planning authority.

(2) The ecological management plan must include an implementation timetable and must be carried out as approved.

### **Alteration, reconstruction or replacement of buildings**

10. No alteration, reconstruction or replacement of a building is to be carried out under article 5 (maintenance of authorised development) except in accordance with plans and specifications approved (after consultation) in writing by the relevant planning authority.

### **Alteration, reconstruction or replacement of level crossings**

11.—(1) Within 12 months of the commencement of the operation of the authorised development a report on the optimisation of the operation and risk assessments of the level crossings on the Askern Line between the authorised development and the Norton level crossing must be submitted to, and agreed in writing by, the Office of Rail Regulation and made available to the relevant local highway authority.

(2) Before commencement of the removal of the level crossing at Honey Lands Lane a report on the amendments to and risk assessment of the Owston Grange Farm No. 1 crossing both during construction and in final operational form must be submitted to, and agreed in writing by, the Office of Rail Regulation and made available to the relevant highway authority.

### **Amendments to approved details**

12. With respect to any requirement which requires the authorised development to be carried out in accordance with the details approved by the relevant planning authority, the approved details are taken to include any amendments that may subsequently be approved in writing by the relevant planning authority.



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<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Street subject to street works</i>
	Joan Croft Lane Honey Lands Lane Bell Croft Lane Middle Lane Field Station Road Private roads through Thorpe Marsh Power Station Applehurst Lane Private track from Sickle Croft Farm to Applehurst Lane A19

SCHEDULE 5

Article 13

STREETS TO BE STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New Street to be substituted</i>
Doncaster Metropolitan Borough	Joan Croft Lane  Farm access over Honey Lands Lane level crossing and Footpath 11 south to Honey Lands Lane.  Honey Lands Lane at junction with Joan Croft Lane	Road over Joan Croft Level Crossing and south east section of Joan Croft Lane between points V and W.  Stopping up of farm access between points 1, 2 and 3.  Stopping up of Footpath 11 between points 2 and 2a.  Close bridleway 13 between points 6 and 7.	New access to be provided over new highway bridge over railway (Work No.8) between points S and U via point T.  New farm access and footpath to be provided between point 1 and point 4, between point 4 and point 5 and between point 5 and point 3.  Proposed new bridleway to be created between point 6 and point 8.

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## SCHEDULE 6

Article 15

## STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	
<i>Area</i>	<i>Street to be temporarily stopped up</i>	<i>Extent of temporary stopping up</i>	
Doncaster Borough	Metropolitan	Rockley Lane	Between points A and B
		Southbound lane of A19 at junction of Rockley Lane	Between points C and D
		Holme Lane	Between points E and F
		Southbound lane of A19 at junction of Holme Lane	Between points G and H
		Private (unnamed) access track	Between points J and K
		Storrs Lane	Between points L and M
		Rockley Lane	Rockley Lane between Storrs Lane and Holme Lane between points N and P
		Joan Croft Lane	Between points Q and R
		Applehurst Lane	Between points X and Y
	Applehurst Lane	Between points Y and Z	

## SCHEDULE 7

Article 19

## REPLACEMENT AND CLOSURE OF LEVEL CROSSINGS

<i>(1)</i>	<i>(2)</i>	<i>(3)</i>	<i>(4)</i>
<i>Area</i>	<i>Level crossing to be discontinued</i>	<i>Street to be stopped up</i>	<i>New street to be substituted</i>
Doncaster Metropolitan Borough	Joan Croft Level Crossing	Joan Croft Lane over the level crossing and the south eastern section of Joan Croft Lane between points V and W	New access to be provided over new highway bridge over railway line (Work No.8) between points S and U via point T
	Owston Grange No. 1 Level Crossing	Stopping up of the farm access between points 1, 2 and 3	New boundary and farm access to be provided between point 1 and point 4, point 4 and point 5, and point 5 and point 3



SCHEDULE 8

Article 24(2)

LAND IN WHICH ONLY NEW RIGHTS ETC. MAY BE ACQUIRED

<i>(1)</i> <i>Number of land shown on Land Plan</i>	<i>(2)</i> <i>Purpose for which rights over the land may be acquired</i>
37a	Right to construct, keep, maintain, protect, use and renew the authorised development
47a	Right to construct, keep, maintain, protect, use and renew the authorised development
68	Right to construct, keep, maintain, protect, use and renew the authorised development
73a	Right to construct, keep, maintain, protect, use and renew the authorised development
87, 87a, 88, 90, 91 and 92	Right to construct, keep, maintain, protect, use and renew the authorised development

SCHEDULE 9

Article 24(3)

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 on the scope of paragraph 1, the Land Compensation Act 1973(2) 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 of the 1965 Act as substituted by paragraph 4—

- (a) for the words “land is acquired or taken” there are substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there are 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 are substituted the words “a right over land consisting”;

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(2) 1973 c. 26.

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- (b) for the word “severance” there are 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 are substituted the words “right proposed”; and
- (d) for the words “part is” there are substituted the words “right is”.

#### *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 read (according to the requirements of the particular context) as referring to, or as including references to—

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

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

**4.** For section 7 of the 1965 Act (measure of compensation in case of severance) there is substituted the following section—

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

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

“**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
- (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 (North Doncaster Chord) Order 2012(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.

(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),

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 of the 1965 Act (powers of entry) 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 it has power, exercisable in equivalent circumstances and subject to 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 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act are modified correspondingly.

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

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

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## SCHEDULE 10

Article 30

## LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on the land plans</i>	<i>(3)</i> <i>Purposes for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
Doncaster Metropolitan Borough	1, 5	Worksite and access for construction	Work No 2
	5a, 5b, 5c, 5d, 5e	Temporary passing bay for construction route	Work Nos 1, 4, 5, 6
	6, 12	Worksite and access for construction	Work Nos 3A, 3B
	12a, 12b, 12c	Temporary passing bay for construction route	Work Nos 1, 4, 5, 6
	13, 14, 15,16	Worksite and access for construction	Work Nos 1, 4, 5, 6
	19, 21 ,23	Worksite and access for construction	Work Nos 1, 4, 5, 6
	24	Worksite and access for construction	Work Nos 1, 4, 5, 6
	28, 29, 32, 35	Worksite and access for construction	Work Nos 1, 4, 5, 6
	36, 37	Worksite	Work Nos 1, 6, 7, 8
	40, 41	Worksite and access for construction	Work Nos 1, 6, 7, 8
	42	Worksite	Work Nos 1, 6, 7, 8
	43a	Worksite and access for construction	Work Nos 1, 6, 7, 8
	44, 46, 47	Worksite	Work Nos 1, 6, 7, 8
	49, 54, 56, 59, 60	Worksite	Work Nos 1, 6, 7, 8
	61	Worksite and access for construction	Work Nos 1, 6, 7, 8
	63	Worksite	Work Nos 1, 6, 7, 8
	64	Worksite	Work Nos 1, 6, 7, 8, 9, 10
66, 67, 67a	Worksite and access for construction	Work Nos 1, 6, 7, 8, 9, 10	
70, 71, 72	Worksite and access for construction	Work Nos 1, 9, 10	

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<i>(1)</i> <i>Location</i>	<i>(2)</i> <i>Number of land shown on the land plans</i>	<i>(3)</i> <i>Purposes for which temporary possession may be taken</i>	<i>(4)</i> <i>Relevant part of the authorised development</i>
	73	Worksite and access for construction	Work Nos 1, 9, 10,11
	75	Worksite and access for construction	Work Nos 1, 9, 10,11
	77, 77a	Worksite and access for construction	Work Nos 1, 11
	81	Worksite and access for construction	Work Nos 1, 11, 12, 13
	84, 85, 86,	Worksite and access for construction	Work Nos 1, 11, 12, 13
	89, 93, 96, 98, 99, 99a, 102, 103, 104, 105, 106, 107, 109a, 110a, 111, 112, 113, 114	Worksite and access for construction	Work Nos 1, 11, 12, 13

SCHEDULE 11

Article 39

TRAFFIC REGULATION

Prohibition of driving

<i>(1)</i> <i>Road</i>	<i>(2)</i> <i>Extent</i>	<i>(3)</i> <i>Notes</i>
A19 at junction with Rockley Lane	The southbound lane of the A19 between points C and D shown on the street plans	To maintain traffic flow during construction of junction widening works
A19 at junction with Holme Lane	The southbound lane of the A19 between points G and H shown on the street plans	To maintain traffic flow during construction of junction widening works

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## SCHEDULE 12

Article 40

## PROTECTIVE PROVISIONS

## PART 1

FOR THE PROTECTION OF ELECTRICITY,  
GAS, WATER AND SEWERAGE UNDERTAKERS

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

2. In this Part of 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>(4)</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, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991<sup>(5)</sup>; 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 of that Act,

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—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(6)</sup>;
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

<sup>(4)</sup> 1989 c. 29.

<sup>(5)</sup> 1991 c. 56.

<sup>(6)</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).

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

3. This Part of 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 must not acquire any apparatus otherwise 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 must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must 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 must 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 must, 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 subsequently for the 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 apparatus is to be constructed, the undertaker in question must, 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 Part of this Schedule is to 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 44 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, 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 Part 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, or part of any work in connection with the construction or removal of apparatus in any land of Network Rail, that work, instead of being executed by the undertaker, must be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of, the undertaker.

(7) Nothing in sub-paragraph (6) authorises 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 Part 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

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are to 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 44 (arbitration).

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

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

(2) Those works are to 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 the undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under sub-paragraph (2) must 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 apply as if the removal of the apparatus had been required by Network Rail under paragraph 5(2).

(5) Nothing in this paragraph precludes 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 apply to and in respect of the new plan, section and description.

(6) Network Rail is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must 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 must 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 must 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) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part 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 of 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 in accordance with article 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of 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 sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to 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 must not be treated as a 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 must 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) must, 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 ordinary 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 such 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 must—

- (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) imposes 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 must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of Network Rail which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

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**10.** Nothing in this Part of this Schedule affects 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.

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**11.** For the protection of any operator, the following provisions, unless otherwise agreed in writing between Network Rail and the operator, have effect.

**12.** In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(7);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(8);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

**13.** The exercise of the powers of article 32 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunication Act 1984(9) (undertaker’s works).

**14.—(1)** Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator, Network Rail must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—
  - (i) make reasonable compensation to an operator for loss sustained by it; and

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(7) 2003 c. 21

(8) See section 106.

(9) 1984 c. 12.

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(ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes 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 operator, its officers, servants, contractors or agents.

(3) The operator must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of Network Rail which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between Network Rail and the operator under this Part of this Schedule is to be referred to and settled by arbitration under article 44 (arbitration).

(5) This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between Network Rail and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

(6) Nothing in this Part of this Schedule affects 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.

## PART 3

### FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

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

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” are 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 and any ancillary works constructed as a consequence of works carried out for drainage purposes;

“the fishery” means any waters containing fish and fish in 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

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- (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 except a public sewer.

**16.**—(1) Before beginning to construct any specified work, Network Rail must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 26.

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

- (a) must not be unreasonably withheld or delayed;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval or receipt of further particulars if such particulars have been required by the Agency and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

**17.** Without limitation on the scope of paragraph 16 but subject always to the provision of that paragraph as to reasonableness, the requirements which the Agency may make under that paragraph include conditions requiring Network Rail at its own expense to construct such protective works, whether temporary or permanent, before or 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—

- (a) to safeguard any drainage work against damage; or
- (b) 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 the specified work.

**18.**—(1) Subject to sub-paragraph (2), the specified work, and all protective works required by the Agency under paragraph 17, must be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and an officer of the Agency is entitled to watch and inspect the construction of such works.

(2) Network Rail must 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 completed.

(3) If the Agency reasonably requires, Network Rail must construct all or part of the protective works so that they are in place prior to the construction of any specified work.

(4) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require Network Rail at Network Rail’s own expense to comply with the requirements of this Part of this Schedule or (if Network Rail 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 and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 22, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon Network Rail, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing is recoverable from Network Rail.

(6) 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 must not except in emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

**19.—(1)** Subject to sub-paragraph (6), Network Rail must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by Network Rail for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which Network Rail is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require Network Rail to repair and restore the work, or any part of such work, or (if Network Rail 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 to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 22, 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 (2) on Network Rail, Network Rail has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from Network Rail.

(4) If there is any failure by Network Rail to obtain consent or comply with conditions imposed by the Agency in accordance with the provisions of this Part of this Schedule the Agency may serve written notice requiring Network Rail to cease all or part of the specified works and Network Rail must cease the specified works or part of them until it has obtained the consent or complied with the condition unless the cessation of the specified works or part of them would cause greater damage than compliance with the written notice.

(5) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(6) This paragraph does not apply to drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not prescribed by the powers of the Order from doing so.

**20.** Subject to paragraph 22, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by Network Rail to the reasonable satisfaction of the Agency and if Network Rail fails to do so, the Agency may make good the same and recover from Network Rail the expense reasonably incurred by it in so doing.

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**21.**—(1) Network Rail must 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 Network Rail 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) Subject to paragraph 22, 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, Network Rail fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from Network Rail the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 22, 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 Network Rail the reasonable cost of so doing provided that notice specifying those steps is served on Network Rail as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

**22.**—(1) Nothing in paragraphs 18(4), 19(3), 20, 21(3) and (4) authorises the Agency to execute works on or affecting an operational railway forming part of Network Rail’s network without the prior consent in writing of Network Rail.

(2) Consent under paragraph 1 must not be unreasonably withheld or delayed and Network Rail is deemed to have given its consent if it has not refused consent within 2 calendar months of receiving a written request by the Agency.

**23.** Network Rail must indemnify the Agency in respect of all 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 Part of this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

**24.**—(1) Without affecting the other provisions of this Part of this Schedule, Network Rail must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, 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 development or any sewers, drains and 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 Network Rail, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency must give to Network Rail reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of Network Rail which agreement must not be unreasonably withheld or delayed.

**25.** The fact that any work or thing has been executed or done by Network Rail 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, does not relieve Network Rail from any liability under the provisions of this Part of this Schedule.

**26.** Any dispute arising between Network Rail and the Agency under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 44 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by Network Rail or the Agency, after notice in writing by one to the other.