

SCHEDULE 8

Protective provisions

PART 2

Protection for Network Rail Infrastructure Limited, etc.

11.—(1) In this paragraph—

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

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that the EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

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

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

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified under paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified under paragraph (a).

(5) In any case where it is established that EMI can reasonably be prevented only by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution are in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) have effect subject to the sub-paragraph.

(6) If, at any time before the commencement of regular revenue-earning operations of the authorised development and notwithstanding any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI, then the undertaker must immediately on receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) immediately cease to use (or procure the cessation of use of) the undertaker’s apparatus causing the EMI until all measures necessary have been taken to remedy the

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EMI by way of modification to the source of the EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred —

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

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

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

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

(11) In relation to any dispute arising under this paragraph, the reference in article 36 (arbitration) to the Secretary of State must be read as a reference to the President of the Institution of Engineering and Technology.