

SCHEDULES

SCHEDULE 12

PROTECTIVE PROVISIONS

PART 4

FOR THE PROTECTION OF HIGH SPEED TWO (HS2) LIMITED

34. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the company.

35. In this Part of this Schedule—

“the Act limits” has the same meaning as in section 68(2) of the HS2 Act;

“the company” means; High Speed Two (HS2) Limited (company number 06791686) whose registered office is at Two Snowhill, Snow Hill Queensway, Birmingham, England, B4 6GA (HS2)) and any associated company of High Speed Two (HS2) Limited which holds property for railway purposes and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 (meaning of “subsidiary” etc.) of the Companies Act 2006⁽¹⁾) the holding company of High Speed Two (HS2) Limited, a subsidiary of High Speed Two (HS2) Limited or another subsidiary of the holding company of High Speed Two (HS2) Limited;

“company’s engineer” means the company’s Head of Construction, Engineering and Delivery or such other engineer appointed by the company (and notified to the undertaker) for the purposes of this Order;

“the HS2 Act” means the High Speed Rail (London – West Midlands) Act 2017⁽²⁾;

“the HS2 works” means the high speed railway link to be built pursuant to the HS2 Act;

“the HS2 land” means so much of the land within the Order limits which also falls within the Act limits;

“specified work” means so much of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, the HS2 land.

Regulation of powers

36.—(1) The undertaker must before commencing construction of any specified work supply to the company proper and sufficient plans of that work for the reasonable approval of the company’s engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the company’s engineer or settled by arbitration.

(2) The approval of the company’s engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and may be made subject to such conditions as are reasonably necessary

(1) 2006 c. 46.

(2) 2017 c.7.

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to mitigate the impact of the specified works on the construction, commissioning, maintenance, operation or safety of the HS2 works.

(3) Without limiting the scope of sub-paragraph (2), if by the end of the period of 28 days beginning with the date on which plans are supplied to the company under sub-paragraph (1), the company's engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the company's engineer written notice requiring the company's engineer to intimate approval or disapproval within a further period of 28 days.

(4) If by the end of the period of 28 days beginning with the date upon which the company's engineer receives notice under sub-paragraph (3), the engineer has not intimated approval or disapproval, the engineer is deemed to have approved the plans as submitted.

37.—(1) Any specified work must, when commenced, be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 36 unless otherwise agreed in writing between the company and the undertaker;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the company's engineer; and
- (c) in such manner as to cause as little damage as is possible to the HS2 land.

(2) If any such damage is caused by the carrying out of, or in consequence of the construction of, a specified work, the company may inspect the damage and either—

- (a) direct that the undertaker, regardless of any approval described in paragraph 36(1), make good such damage and pay to the company all reasonable expenses to which the company may be put and compensation for any costs or losses which it may sustain by reason of any such damage; or
- (b) except in relation to HS2 land vested in the undertaker, elect to make good such damage itself and recover from the undertaker all reasonable expenses to which the company may be put and compensation for any costs or losses which it may sustain by reason of any such damage.

(3) Nothing in this Part of this Schedule imposes—

- (a) any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the company or its servants, contractors or agents; or
- (b) any liability on the company with respect to any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

38. The undertaker must—

- (a) at all times afford reasonable facilities to the company's engineer for access to a specified work during its construction; and
- (b) supply the company's engineer with all such information as the company's engineer may reasonably require with regard to a specified work or the method of constructing it.

39. The undertaker must repay to the company all fees, costs, charges and expenses reasonably and properly incurred by the company in respect of the approval by the company's engineer of plans submitted by the undertaker and the supervision by the company's engineer of the construction of a specified work.

40.—(1) Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not permanently or temporarily acquire HS2 land or any rights on, across, under or over HS2 land otherwise than by written agreement with the company.

(2) The undertaker must not exercise the powers conferred by article 23 (authority to survey and investigate the land) in respect of any HS2 land otherwise than by written agreement with the company.

(3) The provisions of this paragraph do not apply to any HS2 land that is vested in the undertaker.

Co-operation

41.—(1) On a monthly basis, or such other period as may be agreed, from the date this Order is made until completion of the specified works, the undertaker will provide the company with a programme of works, such programme to include—

- (a) the intended date of commencement of the specified work;
- (b) the anticipated duration of the construction of the specified work; and
- (c) an updated (insofar as is reasonably practicable) suite of drawings and plans for the specified work and in the absence of any such plans an estimated date of when the plans will be ready for the company to review.

(2) On a monthly basis, or such other period as may be agreed, from the date this Order is made until completion of the specified works, the company will provide the undertaker with a programme of works for the HS2 works, such programme to include—

- (a) the intended date of commencement of any works within the Order limits;
- (b) the anticipated duration of the construction of such works; and
- (c) an updated (insofar as is reasonably practicable) suite of drawings and plans for such works and in the absence of any such plans an estimated date of when the plans will be ready for the undertaker to review.

(3) The company must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the company under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

(4) The undertaker must at all times afford reasonable facilities and access to the company and its agents for the purpose of the company carrying out any works to facilitate the HS2 works and must supply the company with such information as it may reasonably require with regard to such works or the method of constructing them.

Indemnity

42.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the specified works the company becomes liable or incurs any increased liability to pay any amount to any third party, the undertaker will indemnify the company for any expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the company, by reason or in consequence of the company becoming liable or its liability increasing to any third party as aforesaid other than arising from any default of the company.

(2) The fact that any act or thing may have been done by the company on behalf of the undertaker or in accordance with a plan approved by the company or in accordance with any requirement of the company or under its supervision will not, unless sub-paragraph (3) applies, excuse the undertaker from liability under the provisions of sub-paragraph (1) unless the company fails to carry out and execute the works properly with due care and attention and in a skilful and workmanlike manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—

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- (a) any expenses, loss, demands, proceedings, damages, claims, penalty or costs to the extent that it is attributable to the neglect or default of the company, its officers, servants, contractors or agents;
- (b) any part of the authorised development carried out by the company in the exercise of any functions conferred by this Order pursuant to a transfer or grant under article 8 (consent to transfer benefit of Order).

(4) The company must give the undertaker reasonable notice of any such third party claim or demand and no settlement, admission of liability or compromise must, unless payment is required in connection with a statutory compensation scheme, be made without first consulting the undertaker and considering their representations.

(5) The company must, in respect of any matter covered by the indemnity given by the undertaker in this paragraph, at all times act reasonably and in the same manner as it would as if settling third party claims on its own behalf from its own funds.

(6) The company must use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands, and penalties to which the indemnity under this paragraph applies where it is within the company's reasonable ability and control to do so and which expressly excludes any obligation to mitigate liability arising from third parties which is outside of the company's control and if reasonably requested to do so by the undertaker the company must provide an explanation of how the claim has been minimised, where relevant.