

SCHEDULES

SCHEDULE 12

PROTECTIVE PROVISIONS

PART 6

FOR THE PROTECTION OF CAMBRIDGESHIRE COUNTY COUNCIL IN RESPECT OF THE GUIDED BUSWAY

Application

58. The provisions of this Part of this Schedule shall have effect unless otherwise agreed in writing between the operator and Network Rail.

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

Interpretation

60. In this Part of this Schedule—

“approval” in relation to specified works means approval by the engineer appointed by the operator (such approval not to be unreasonably withheld or delayed);

“construction” includes execution, placing, altering, replacing, relaying, removal and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by the operator for the purpose in question;

“guided busway” means a way provided for the use of vehicles which are constructed or adapted to carry more than eight passengers for hire or reward and use a mode prescribed in article 2(e), (f), (g) or (h) of the Transport and Works (Guided Transport Modes) Order 1992(h) or a mode which is track-based or road-based and prescribed in any subsequent order made under s.2 of the 1992 Act;

“guided busway property” means any guided busway belonging to the operator, any works, apparatus and equipment of the operator connected with any such guided busway and any land or premises belonging to or used by the operator for the purposes of any such guided busway, works, apparatus or equipment which also includes any accesses, maintenance tracks, cycleway and/or footpaths which form part of the guided busway property;

“guided busway service” means the service provided by the operator for the carriage of passengers via the guided busway;

“maintaining” means works of maintenance and repair that are material to the structures and safe operation of guided busway property;

“operator” means Cambridgeshire County Council or any other person to whom the operator has disposed of any guided busway pursuant to a statutory power, including article 48 of the Cambridgeshire Guided Busway Order 2005 ([S.I. 2005/3523](#));

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“plans” includes sections, designs, design data, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, method statements and programmes and details of the extent, timing and duration of any proposed occupation of guided busway property; and

“specified works” means so much of any of the authorised works as may be situated within 15 metres (measured in any direction) of guided busway property or may in any way adversely affect the guided busway property.

Exercise of Powers

61.—(1) Network Rail must not exercise the powers conferred by or under this Order in respect of any guided busway property except with the consent of the operator.

(2) Network Rail must not by or under the powers of this Order—

- (a) acquire or enter upon;
- (b) take or use, whether temporarily or permanently;
- (c) acquire any new right over or under; or
- (d) acquire any subsoil of or airspace over,

any guided busway property except with the consent of the operator.

(3) Network Rail must not by or under the powers of this Order extinguish any existing rights of the operator in respect of any third party property, except with the consent of the operator.

(4) Where the operator is asked to give its consent pursuant to sub-paragraphs (1) (2) or (3), such consent must not be unreasonably withheld but may be given subject to reasonable conditions (or where there is any dispute as to such conditions, subject to such conditions as settled by arbitration in accordance with paragraph 74).

(5) Network Rail must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any guided busway property, unless preventing such access is with the consent of the operator.

Guided busway property: notification, protective works

62.—(1) Subject to sub-paragraph (2), Network Rail must give to the engineer not less than 28 days’ notice of its intention to—

- (a) commence the construction of any of the specified works; and
- (b) carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with the guided busway property.

(2) Network Rail is not required to comply with sub-paragraph (1) in a case of emergency but in that case Network Rail must give to the operator notice as soon as is reasonably practicable.

63.—(1) Not less than 28 days before commencing the specified works, Network Rail must submit to the operator proper and sufficient plans of the specified works for the approval of the engineer.

(2) Network Rail must not commence the specified works until the plans of the specified works submitted under sub-paragraph (1) are—

- (a) approved in writing by the engineer;
- (b) deemed to have been approved by the engineer pursuant to sub-paragraph (3) below; or
- (c) settled by arbitration.

(3) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans were provided

to the operator the engineer has not notified Network Rail of their disapproval of those plans and the grounds of their disapproval the engineer Network Rail may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 14 days beginning with the date upon which the engineer receives written notice from Network Rail. If by the expiry of the further 14 days the engineer has not intimated approval or disapproval, the engineer will be deemed to have approved the plans as submitted.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's reasonable opinion should be carried out before the commencement of the specified works to ensure the safety or stability of guided busway property or the continuation of safe and efficient operation of any guided busway belonging to the operator (including any relocation or removal of works, apparatus and equipment necessitated by the specified works, or for the comfort and safety of passengers who may be affected by the specified works), and any such protective works as may be reasonably necessary for those purposes must be constructed by the operator or by Network Rail, at the election of the operator, in accordance with paragraphs 64 to 66 and such protective works must be carried out at the expense of Network Rail in either case without unnecessary delay. Network Rail must not commence the construction of the specified works until the engineer has notified Network Rail that the protective works have been completed to their reasonable satisfaction.

(5) The engineer must inspect the protective works and notify Network Rail that the protective works have been completed to their reasonable satisfaction or otherwise, as soon as reasonably practicable after the protective works have been completed.

Carrying out protective works and specified works

64. Any specified works and any protective work specified pursuant to paragraph 63(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 63;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause—
 - (i) as little damage as is reasonably practicable to the guided busway property; and
 - (ii) as little interruption as is reasonably practicable to the guided busway service.

Access

65. Network Rail must on being given reasonable notice (save in the event of an emergency)—

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

66. The operator must on being given reasonable notice (save in the event of an emergency)—

- (a) at all times afford reasonable facilities to Network Rail and its agents for access to any works carried out by the operator under this Part of this Schedule during their construction; and
- (b) supply Network Rail with all such information as it may reasonably require with regard to such works or the method of their construction.

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Damage to guided busway property: costs, losses etc.

67.—(1) Network Rail must pay to the operator all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by the operator—

- (a) by reason of the construction or maintenance of a specified work or a protective work or the failure of it; or
- (b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work or a protective work,

and Network Rail must indemnify and keep indemnified the operator from and against all claims and demands arising out of or in connection with a specified work or a protective work or any such failure, act or omission and the fact that any act or thing may have been done by the operator on behalf of the operator or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision will not (if it was done without negligence on the part of the operator or of any person in its employ or of its contractors or agents) excuse Network Rail from any liability under the provisions of this sub-paragraph.

(2) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of Network Rail.

(3) The sums payable by the undertaker under sub-paragraph 67(1) may include a sum equivalent to the relevant costs that the operator has reasonably incurred in order to ensure the on-going provision of the guided busway service or other local services to provide an equivalent transport connectivity as was provided by the guided busway service along any guided busway which is temporarily or permanently unavailable as a result of any of the matters in sub-paragraph (1) provided always that the operator shall not incur any costs pursuant to this paragraph (3) until it first notifies Network Rail of its proposals to ensure continuity of service in the event the guided busway is temporarily or permanently unavailable (such alternative provision to be reasonable having regard to the extent of time the guided busway will be unavailable) and shall take into account representations made by Network Rail.

(4) Subject to the terms of any agreement between the operator and any provider of the guided busway service regarding the timing or method of payment of the relevant costs in respect of that provider, the operator must promptly pay to each provider the amount of any sums which the operator receives under sub-paragraph (3) which relates to the relevant costs of that provider.

(5) The obligation under sub-paragraph (3) to pay the operator the relevant costs will, in the event of default, be enforceable directly by any provider concerned to the extent that such sums would be payable to that provider under sub-paragraph (4).

(6) Nothing in this paragraph 67 shall impose any liability on Network Rail with respect to any fees, costs, charges and expenses attributable to the act, neglect, default or omission of the operator or its servants, contractors or agents and any liability of Network Rail under this paragraph shall be reduced proportionately to the extent to which any fees, costs, charges or expenses are attributable to the act, neglect, default or omission of the operator or its servants, contractors or agents.

(7) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each provider of the guided busway service as a consequence of any restriction of the use of any guided busway as a result of the construction, maintenance or failure of a specified work or a protective work or any such act or omission as mentioned in sub-paragraph (1); and

“provider of the guided busway service” means any person who is authorised to provide local services using a guided busway pursuant to agreements with the operator.

Expenses

68. Network Rail must repay to the operator all reasonable and proper fees, costs, charges and expenses reasonably incurred by the operator—

- (a) in constructing any part of the specified works on behalf of Network Rail or any protective works under the provision of paragraph 63(4) above including in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably and properly incurred by the operator in maintaining and renewing such works;
- (b) in respect of the employment or procurement of the services of any inspectors, supervisory staff and other persons whom it is reasonably necessary to appoint for inspecting, signalling, monitoring and lighting guided busway property in order to prevent, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction of the protective works or specified works;
- (c) resulting from any speed restrictions which in the reasonable opinion of the engineer are necessary by reason or in consequence of the construction of the protective works or specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of guided busway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction of the specified works; and
- (e) in respect of the approval by the engineer of plans submitted by Network Rail and the supervision by the engineer of the construction of the protective works or specified works.

Maintenance of the specified works

69. If at any time after the completion of a specified work, not being a work vested in the operator, the operator gives notice to Network Rail informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of guided busway property, Network Rail must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as to not adversely affect guided busway property.

Assessment of sums payable

70. In the assessment of any sums payable to the operator under this Part of this Schedule there must not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the operator if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by Network Rail under this Part of this Schedule or increasing the sums so payable.

Agreements

71. Network Rail and the operator may enter into, and carry into effect, agreements for the transfer to Network Rail of—

- (a) any guided busway property shown on the deposited plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such guided busway property; and
- (c) any rights and obligations (whether or not statutory) of the operator relating to any guided busway property,

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and any such agreement may as relevant take effect as a disposal under article 47 of the Cambridgeshire Guided Busway Order 2005, but the consent of the Secretary of State under paragraph (1) of that article will not be required in relation to such a disposal.

Transfer of undertaking

72. Network Rail must give written notice to the operator if any application is proposed to be made by Network Rail for the Secretary of State's consent, under article 31 (powers to transfer undertaking) of this Order and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

Certified documents

73. Network Rail must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 40 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to the operator in a format specified by the operator.

Disputes

74. Any difference arising between Network Rail and the operator under this Part of this Schedule (other than a difference as to the meaning or construction of the Part of this Schedule) is to be referred to and settled by arbitration in accordance with article 44 (arbitration).