

SCHEDULES

SCHEDULE 6

Article 32

FOR PROTECTION OF NETWORK RAIL

Introductory

1.—(1) The following provisions of this Schedule have effect unless otherwise agreed in writing between the undertaker and Network Rail.

(2) In this Schedule—

“construction” (*“adeiladu”*) includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” (*“y peiriannydd”*) means an engineer to be appointed by Network Rail for the purpose in question;

“plans” (*“planiau”*) includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction) and programmes;

“protective works” (*“gweithfeydd diogelu”*) means works specified by the engineer under paragraph 5(1);

“Network Rail” means Network Rail Infrastructure Limited except that any reference to costs or losses incurred or suffered by Network Rail includes reference to costs or losses incurred or suffered by any relevant associated company;

“relevant associated company” (*“cwmni cysylltiedig perthnasol”*) means any company which is (within the meaning of section 736 of the Companies Act 1985⁽¹⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited and, in any of these cases, holds or uses property for railway purposes;

“railway property” (*“eiddo'r rheilffyrdd”*) means any railway belonging to Network Rail and any works, apparatus and equipment belonging to Network Rail or a relevant associated company connected with any such railway and includes any land held or used by Network Rail or a relevant associated company for the purposes of such railway or works, apparatus or equipment;

“relevant work” (*“gwaith perthnasol”*) means—

- (a) so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property; and
- (b) to the extent that it is not an authorised work, any protective work constructed by the undertaker.

(1) 1985 c. 6.

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Powers requiring Network Rail's consent

2.—(1) The undertaker must not, in the exercise of the compulsory powers conferred by or under this Order, acquire or use, or acquire new rights over, any railway property, unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not exercise the powers conferred by article 7 or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property, unless the exercise of such powers is with the consent of Network Rail.

(3) The undertaker must not in the exercise of the powers conferred by or under this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(4) The undertaker must not exercise the powers conferred by section 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 4 to this Order, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent under this paragraph, such consent is not to be unreasonably withheld or delayed, but may be given subject to reasonable conditions.

Approval of plans

3.—(1) The undertaker must, before commencing construction of any relevant work, supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and must not commence construction of any relevant work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) is not to be unreasonably withheld or delayed, and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not indicated disapproval of those plans and the grounds of his disapproval, the engineer will be deemed to have approved the plans as submitted.

Election by Network Rail to construct relevant work itself

4.—(1) If Network Rail reasonably considers that any relevant work or any part of a relevant work will or may affect the stability of railway property or the safe operation of traffic on its railways, it may elect to construct that relevant work or that part itself by giving notice to the undertaker specifying the work or part in question (“the specified work”) (“*y gweithfeydd a bennwyd*”) and stating that it desires to construct that work or part.

(2) Notice of an election under sub-paragraph (1) cannot be given after the end of the period of 56 days beginning with the date on which plans of the specified work have been supplied to Network Rail under paragraph 3.

(3) Following an election by Network Rail under sub-paragraph (1), the specified work must not be constructed except by Network Rail in accordance with sub-paragraph (4).

(4) If the undertaker confirms that it desires the specified work to be constructed, Network Rail must construct it (together with any adjoining part of any relevant work which the undertaker reasonably requires to be constructed in one operation with the specified work) on the undertaker's behalf—

- (a) with all reasonable dispatch;
- (b) to the reasonable satisfaction of the undertaker;
- (c) in accordance with the plans approved or settled under paragraph 3; and

- (d) under the supervision (where appropriate and if given) of the undertaker.

Protective works

5.—(1) When signifying approval of the plans of any relevant work, the engineer may specify any protective works (whether temporary or permanent) which the engineer reasonably considers should be carried out before the commencement of the relevant work to ensure the safety or stability of railway property and the continued safe and efficient operation of the railways of Network Rail or the services of operators using those railways; and such protective works may include any relocation of works, apparatus and equipment necessitated by the relevant work.

(2) Any such protective works must be constructed by Network Rail or by the undertaker, if Network Rail so desires, with all reasonable dispatch; and the undertaker must not commence the construction of the relevant work until the engineer has notified the undertaker that the protective works have been completed to the engineer's reasonable satisfaction.

Construction of relevant work

6.—(1) Any relevant work must, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or settled under paragraph 3;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on that railway and the use by passengers of railway property.

(2) If the undertaker does cause any damage to railway property in, or in consequence of, constructing any relevant work, it must make good such damage as soon as reasonably practicable.

Access

7. The undertaker must—

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

8. Network Rail must—

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

Fencing

9. Where so required by the engineer the undertaker must, to the reasonable satisfaction of the engineer, fence off the relevant works, or take such other steps as the engineer may require to be taken for the purpose of separating the relevant works from railway property, whether on a temporary or permanent basis or both.

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Maintenance of relevant work

10. The undertaker must secure that any relevant work, other than a work which belongs to Network Rail (or a relevant associated company), is maintained in such a state or condition as not to cause any adverse effect on the operation of railway property.

Alterations, etc. to railway property: repayment of additional expenses

11. If—

- (a) any alterations or additions, either permanent or temporary, to railway property are reasonably required during the construction of any relevant work, or during a period of 12 months commencing with the date of completion of that work, in consequence of the construction of that relevant work; and
- (b) Network Rail gives to the undertaker reasonable notice of its intention to carry out those alterations or additions, specifying the alterations or additions in question,

the undertaker must pay to Network Rail the reasonable cost of carrying out those alterations or additions.

Repayment of Network Rail's costs in connection with construction

12. The undertaker must pay to Network Rail a sum equivalent to any costs reasonably incurred by Network Rail in—

- (a) constructing any work on behalf of the undertaker as provided by paragraph 4 or in constructing any protective works as provided by paragraph 5; and
- (b) respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of any relevant work.

Additional costs of Network Rail in maintaining new works

13.—(1) As soon as reasonably practicable following completion of the relevant works, the undertaker must pay to Network Rail a capitalised sum representing the increase in cost which it may reasonably be expected to incur in maintaining any—

- (a) protective works constructed under paragraph 5;
- (b) alterations and additions carried out in accordance with paragraph 11.

(2) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving will be set off against any sum payable by the undertaker to Network Rail under sub-paragraph (1)(b).

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph, provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

Additional costs of Network Rail in maintaining existing railway property

14.—(1) Subject to sub-paragraph (2), the undertaker must pay to Network Rail a sum equivalent to any increase in costs which it reasonably incurs from time to time in maintaining existing railway property by reason of the proximity of the relevant works to the railway property in question.

- (2) Sub-paragraph (1) does not apply to any work of maintenance unless—

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- (a) Network Rail has given 56 days' notice to the undertaker of its intention to carry out that work, specifying the nature of work in question; and
- (b) the work of maintenance is carried out under existing powers.

General indemnity

15.—(1) The undertaker must pay to Network Rail a sum equivalent to any losses or costs not otherwise provided for in this Schedule which may be suffered or reasonably incurred by Network Rail by reason of—

- (a) the construction, maintenance or failure of the relevant works; or
- (b) any act or omission of the undertaker or of any person employed by it or of its contractors or agents whilst engaged upon the relevant works.

(2) The fact that any act or thing may have been done by Network Rail on behalf of the undertaker 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 Network Rail or of any person employed by it or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

Compensation for train operators

16.—(1) The sums payable by the undertaker under paragraph 15 will include a sum equivalent to the relevant costs.

(2) Subject to the terms of any agreement between Network Rail and the relevant train operators regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (1) which relates to the relevant costs of that train operator.

(3) The obligation under sub-paragraph (1) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by the train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (2).

(4) In this paragraph—

“relevant costs” (“*costau perthnasol*”) means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction, or maintenance or failure of the relevant works or any such act or omission as mentioned in paragraph 15(1); and
“train operator” means any person who operates trains in accordance with a licence under section 8 of the Railways Act 1993(2) or an exemption under section 7 of that Act.

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

Saving for access agreements

18.—(1) Where, under this Schedule, Network Rail is required to give its consent or approval in respect of any matter, that consent or approval may be given subject to the condition that Network

(2) 1993 c. 43.

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Rail complies with such of its obligations pursuant to any access agreement or any lease of a station or light maintenance depot as are relevant to that matter.

(2) In this paragraph, “access agreement” (“*cytundeb mynediad*”), “station” (“*gorsaf*”) and “light maintenance depot” (“*gorsaf cynnal a chadw ysgafn*”) have the meaning given by section 83 of the Railways Act 1993.