

SCHEDULES

SCHEDULE 10

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

For protection of Railtrack PLC

5.—(1) The provisions of this paragraph shall have effect save in so far as may be otherwise agreed between Railtrack and the undertaker.

(2) The undertaker shall not compulsorily enter on, acquire or take temporary possession of, or acquire new easements or other rights in or over, designated property, save that it may, with the consent of Railtrack, exercise the powers of article 18, article 29 and article 30 above, or (subject to sub-paragraph (3) below) article 24 above in relation to any such property.

(3) The undertaker shall not, under article 24, acquire any right in or over any designated property comprising a railway facility or network installation which are capable of being acquired by means of an access agreement, but shall acquire any such rights which it requires by means of an access agreement entered into in accordance with the provisions of Part I of the 1993 Act.

(4) Where so required by the engineer, the undertaker shall, to the reasonable satisfaction of the engineer, fence off (whether on a temporary or permanent basis or both) any part of the specified works from designated property.

(5) Except with the consent of Railtrack, the undertaker shall not in the exercise of the powers of this Order interrupt or prejudicially affect pedestrian or vehicular access to any station of Railtrack or any other designated property.

(6) In relation to any rights over land comprising rights, belonging to Railtrack, of access to any designated property, the powers conferred by sections 271 and 272 of the 1990 Act, as applied by paragraph 1 above, to extinguish those rights shall not apply unless the undertaker makes available to Railtrack some suitable alternative means of access to the designated property in question.

(7) The undertaker shall not exercise the powers of section 271 or 272 of the 1990 Act, as applied by paragraph 1 above, so as to require the removal of any apparatus comprising designated property (or extinguish any rights relating to that apparatus), but such apparatus may be removed (or rights extinguished) with the consent of Railtrack.

(8) The consent of Railtrack under sub-paragraphs (2), (5), (6) and (7) above shall not be unreasonably withheld but may be given subject to reasonable conditions.

(9) The undertaker shall, before commencing the specified works, furnish to Railtrack proper and sufficient plans thereof for the approval of the engineer, whose approval shall not be unreasonably withheld, and shall not commence any specified works until plans thereof have been approved in writing by the engineer or settled by arbitration.

(10) If, within 56 days after plans have been furnished to Railtrack under sub-paragraph (9) above, the engineer shall not have intimated his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the same.

(11) If within 56 days after such plans have been furnished to Railtrack, Railtrack shall give notice to the undertaker that Railtrack desire themselves to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of designated property or the

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safe operation of Railtrack's railways, then, if the undertaker desires such part of the specified works to be constructed, Railtrack shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled as aforesaid.

(12) Upon signifying his approval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the commencement of the construction of the specified works to ensure the safety or stability of designated property or the continuation of the safe and efficient operation of the railways of Railtrack or the services of operators using the same and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack to the reasonable satisfaction of the undertaker or (if Railtrack so desires) by the undertaker with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer shall have notified the undertaker that the protective works have been completed to his reasonable satisfaction.

(13) The undertaker shall not commence—

- (a) the construction of any of the specified works, or
- (b) the carrying out of any works for the maintenance of the specified works in so far as such works of maintenance affect or interfere with designated property,

unless it shall first have given to the engineer not less than 28 days' notice of its intention to do so, except that works for the maintenance of the specified works may be carried out in an emergency if such notice as is reasonably practicable has been given.

(14) The specified works shall, when commenced, be carried out—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as aforesaid;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer; and
- (c) in such manner as to cause—
 - (i) as little damage to designated property as may be, and
 - (ii) as little interference as may be with the conduct of traffic on any railway of Railtrack and the use by passengers of designated property,

and, if any damage to designated property or any such interference shall be caused by the carrying out of the specified works, the undertaker shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to Railtrack all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage or interference.

(15) Nothing in sub-paragraph (14) above shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss which is attributable to the act, neglect or default of Railtrack or their servants, contractors or agents.

(16) The undertaker shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction thereof.

(17) Railtrack shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Railtrack under this paragraph during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of construction thereof.

(18) If any alterations or additions, either permanent or temporary, to designated property shall be reasonably necessary during the construction of the specified works or during a period of 12 months after the completion thereof in consequence of the construction of the specified works, such alterations and additions may be effected by Railtrack at a reasonable cost after not less than 28 days'

notice in writing (save in case of emergency whereupon the engineer shall give such notice as is reasonable in the circumstances) from the date of submission of plans, programmes and estimates of costs of such alterations and additions having been given to the undertaker, and the undertaker shall pay to Railtrack the cost thereof as certified by the engineer including, in respect of permanent alterations and additions, a capitalised sum representing the increase in the costs which may be expected to be reasonably incurred by Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions.

(19) If the cost of maintaining, working or renewing designated property is reduced in consequence of any such alterations or additions as is mentioned in sub-paragraph (18) above a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Railtrack under that sub-paragraph.

(20) The undertaker shall repay to Railtrack all costs, charges and expenses reasonably incurred by Railtrack—

- (a) in respect of the approval by the engineer of plans submitted by the undertaker;
- (b) in constructing any part of the specified works on behalf of the undertaker as provided by sub-paragraph (11) above or in constructing any protective works under the provisions of sub-paragraph (12) above including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (c) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching, lighting and signalling any railway of Railtrack in order to prevent, as far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
- (d) resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed and which may be due to the construction or failure of the specified works or from the substitution, suspension or diversion of railway services which may be necessary for the same reason;
- (e) in respect of any additional temporary lighting of designated property in the vicinity of the works, being lighting made reasonably necessary during and by reason of the construction or failure of the specified works; and
- (f) in respect of the supervision by the engineer of the specified works.

(21) Any additional expenses which Railtrack may reasonably incur in altering, reconstructing or maintaining designated property under any powers existing at the date of the making of this Order by reason of the existence of the specified works shall, provided that 56 days' previous notice of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Railtrack.

(22) The undertaker shall be responsible for and make good to Railtrack all reasonable costs, charges, damages and expenses not otherwise provided for in this paragraph which may be occasioned to or reasonably incurred by Railtrack—

- (a) by reason of the construction or maintenance of specified works or the failure thereof; and
- (b) by reason of any act or omission of the undertaker or of any persons in its employ or of their contractors or others whilst engaged upon the construction or maintenance of the specified works;

and the undertaker shall indemnify Railtrack from and against all claims and demands arising out of or in connection with the construction or maintenance of the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done in accordance with approved plans, or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Railtrack or of any person in its employ or

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of their contractors or agents whilst engaged upon the construction of the specified works) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(23) Railtrack shall give to the undertaker reasonable notice of any claim or demand as mentioned in sub-paragraph (22) above and no settlement or compromise thereof shall be made without prior consent of the undertaker.

(24) The compensation payable by the undertaker under sub-paragraph (22) above shall include a sum equivalent to the relevant costs.

(25) Subject to the terms of any agreement between Railtrack and a train operator regarding the timing or method of payment of the relevant costs, Railtrack shall promptly pay to the train operator concerned any sum received by Railtrack by virtue of sub-paragraph (24) above in respect of that train operator.

(26) The obligation of the undertaker under sub-paragraph (24) above to pay the relevant costs shall, in the event of default, be enforceable directly by the train operator concerned.

(27) Nothing in sub-paragraphs (24) to (26) above shall entitle Railtrack or any train operator to any compensation in relation to works which have been transferred to and vested in Railtrack by any agreement made under article 20 above; but nothing in this sub-paragraph shall prejudice any entitlement of Railtrack or any train operator to compensation—

- (a) which has arisen at the date of the transfer and vesting; or
- (b) in respect of the failure of any works resulting from any defect present at the date upon which they are so transferred to and vested in Railtrack.

(28) In this paragraph—

“construction” includes execution, placing and altering and “construct” and “constructed” shall be construed accordingly;

“designated property” means any railway of Railtrack and any works, apparatus and equipment of Railtrack connected therewith and any land held or used by Railtrack for the purposes of such railway or works, apparatus or equipment;

“the engineer” means an engineer appointed by Railtrack;

“plans” includes sections, drawings, calculations, methods of construction, particulars, soil reports, staging proposals and programmes;

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a train operator as a consequence of any restriction of use of Railtrack’s railway network as a result of the construction or maintenance of the specified works or any failure, act or omission mentioned in sub-paragraph (22) above;

“the specified works” means so much of the authorised works as may be situated within 15 metres of, or may in any way affect, designated property; and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the 1993 Act;

and terms which are defined in the 1993 Act shall have the same meanings as in that Act.

6.—(1) Notwithstanding the provisions of article 37 above, the provisions of this paragraph shall have effect except in so far as may be otherwise agreed between Railtrack and the undertaker.

(2) If Railtrack gives notice to the undertaker, at any time prior to the opening of the Sunderland extension for public services operated by the undertaker, informing the undertaker that any designated apparatus is interfering with any specified equipment, the undertaker shall forthwith cease to use its designated apparatus until all necessary alterations and modifications have been carried out—

- (a) by the undertaker, to any designated apparatus, and

(b) by Railtrack, to any specified equipment,
in order to remove the source of the interference.

(3) If Railtrack gives notice to the undertaker after the opening of the Sunderland extension for public services operated by the undertaker that such interference as is mentioned in sub-paragraph (2) above is taking place, the undertaker and Railtrack shall use their best endeavours to determine what alterations and modifications to any designated apparatus or specified equipment should be carried out in order to remove the source of the interference.

(4) Any alterations and modifications to any designated apparatus under sub-paragraph (2) above shall be carried out and completed by the undertaker with all reasonable despatch under the supervision (if given) and to the reasonable satisfaction of the engineer and the undertaker shall afford reasonable facilities to the engineer for access to the Sunderland extension during the carrying out of alterations and modifications under this paragraph.

(5) Railtrack shall afford reasonable facilities to the undertaker for access to any specified equipment during the carrying out of any alterations and modifications thereto under this paragraph and such alterations and modifications shall be carried out and completed by Railtrack with all reasonable despatch.

(6) The undertaker shall repay to Railtrack all costs, charges and expenses reasonably incurred by Railtrack—

(a) in carrying out any alterations and modifications to specified equipment under sub-paragraphs (2) and (3) above; and

(b) in respect of any supervision given by the engineer under sub-paragraph (4) above;

and the undertaker shall pay compensation to Railtrack for any loss which it may sustain by reason of any designated apparatus interfering with any specified equipment.

(7) In this paragraph—

“designated apparatus” means any electric lines, circuits, wires, apparatus and other works of any description belonging to or used by the undertaker for the purpose of operating the Sunderland extension;

“the engineer” means an engineer to be appointed by Railtrack; and

“specified equipment” means any wire, line or apparatus from time to time used by Railtrack for the purpose of transmitting electrical energy or of radio, telegraphic, telephonic or electric signalling communications.