

SCHEDULES

SCHEDULE 12

Article 64

PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this Schedule shall have effect, unless otherwise agreed in writing between Railtrack and the undertaker and, in the case of paragraphs 3 and 16 below, any other person on whom rights or obligations are conferred by those paragraphs.

2. In this Schedule—

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

“the engineer” means an engineer to be appointed by Railtrack for the purposes of this Order;

“the Gosport railway” means the railway or former railway extending from the southern side of The Avenue, Fareham to a line in Gosport drawn between the following National Grid reference points—

459137mE, 101982mN;

459136mE, 101977mN;

459121mE, 101969mN; and

459118mE, 101970mN;

“network”, “operator”, “railway asset”, “railway services” and “station” have the same meaning as in Part I of the Railways Act 1993⁽¹⁾;

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

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any network (including the Gosport railway) or station owned or operated by Railtrack and so owned and operated at the coming into force of this Order, including any land held or used by it at that date for the purposes of any such network or station;

“the rapid transit system” means the authorised transit system and any rapid transit vehicles;

“South West Trains” means South West Trains Limited or, with respect to Fareham Station, Portsmouth and Southsea Station or Portsmouth Harbour Station, its successors in title as lessees of that station;

“specified works” means so much of the authorised works as may be situated upon, across, under or over or within 15 metres of, or may in any way affect, railway property.

3. In so far as the specified works or the acquisition or use of railway property are or may be subject to railway operational procedures, Railtrack and South West Trains shall—

(1) 1993 c. 43.

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- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the rapid transit system pursuant to the Order.

4. The undertaker shall not under the powers of this Order acquire or use or acquire new rights over any railway property (other than the Gosport railway) except with the consent of Railtrack which subject to compliance with railway operational procedures, shall not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker shall not exercise the powers of article 32 of this Order or the powers of section 11(3) of the 1965 Act in respect of any railway property except with the consent of Railtrack which consent, subject to compliance with railway operational procedures, shall not be unreasonably withheld but may be given subject to reasonable conditions.

(2) Except with the consent of Railtrack the undertaker shall not in the exercise of the powers of this Order prevent pedestrian or vehicular access to railway property.

(3) The undertaker shall not exercise the powers of sections 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 11 to this Order, in relation to any right of access of Railtrack to railway property, but any such right of access may be diverted with the consent of Railtrack.

(4) The consent of Railtrack under sub-paragraphs (2) and (3) above shall not be unreasonably withheld but may be given subject to reasonable conditions.

6.—(1) For the purposes of this paragraph—

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

“the undertaker’s apparatus” means any electric lines, circuits, wires, apparatus, equipment, rolling stock and other works of any description owned or used (or intended to be used) by the undertaker for the purposes of operating the authorised transit system; and

“Railtrack’s apparatus” means any lines, circuits, wires, apparatus or equipment owned or used by Railtrack 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 shall apply to EMI only to the extent that such EMI is not attributable to any change to Railtrack’s apparatus carried out after approval of plans under paragraph 8 below for the relevant part of the authorised works giving rise to EMI (unless the undertaker has been notified in writing before the approval of such plans of the intention to make such change).

(3) Subject to sub-paragraph (5) below, the undertaker shall in the design and construction of the authorised transit system and its rolling stock take all measures necessary to prevent EMI and shall establish with Railtrack (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

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

- (a) the undertaker shall consult Railtrack as early as reasonably practicable in order to identify all Railtrack’s apparatus which may be at risk of EMI and thereafter shall continue to consult Railtrack (both before and after formal submission of plans under paragraph 8 below) in order to identify all potential causes of EMI and the measures required to eliminate them;

- (b) Railtrack shall make available to the undertaker all information in Railtrack's possession reasonably requested by the undertaker in respect of Railtrack's apparatus identified pursuant to sub-paragraph (4)(a) above; and
- (c) Railtrack shall allow the undertaker reasonable facilities for the inspection of Railtrack's apparatus pursuant to sub-paragraph (4)(a) above.

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Railtrack's apparatus, Railtrack shall not withhold its consent unreasonably to modifications of that apparatus, but the means of prevention and the method of their execution shall be selected in Railtrack's reasonable discretion and subject to the railway operational procedures, and in relation to such modifications paragraph 8 below shall have effect subject to this sub-paragraph.

(6) If at any time prior to the opening of the authorised transit system to fare-paying passenger traffic, and notwithstanding any measures adopted pursuant to sub-paragraph (3) above, the testing or commissioning of the authorised transit system or its rolling stock causes EMI then the undertaker shall immediately upon receipt of notification by Railtrack 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) forthwith cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5) above) to Railtrack's apparatus.

(7) In the event of EMI having occurred—

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

(8) Where Railtrack approves modifications to Railtrack's apparatus pursuant to sub-paragraphs (5) or (6) above—

- (a) Railtrack shall allow the undertaker reasonable facilities for the inspection of the relevant part of Railtrack's apparatus; and
- (b) any modifications to Railtrack's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the undertaker in accordance with paragraph 11 below.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 18 below shall apply to the costs and expenses reasonably incurred or losses suffered by Railtrack in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purposes of paragraph 16 below any modification to Railtrack's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 71 above to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

7.—(1) The undertaker shall, as soon as reasonably practicable following the decision to proceed with the construction of the authorised works, commission a study of the effects of the construction of Work No. 8A under the harbour for the purposes of, and in accordance with, the provisions of this paragraph.

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(2) The study shall be carried out by an engineer approved by Railtrack and the undertaker or, in the absence of agreement, approved by the President for the time being of the Institution of Civil Engineers.

(3) The object of the study shall be to investigate the effects of the construction of Work No. 8A (including any dredging associated with that construction), both alone and in combination with each of the other projects which at the date of the carrying out of the study can reasonably be expected to be undertaken in the harbour within 1,000 metres of Portsmouth Harbour Station before or at the same time as the construction of that work, on the foundations of Railtrack's Portsmouth Harbour Station and to identify any measures which may be reasonably required to prevent or minimise any adverse impact from that construction; in particular the study shall take into account the effects of any changes of the tidal regime and currents in the harbour caused by that work (both alone and in combination with each of the other projects mentioned above).

(4) The undertaker shall ensure that the study is completed and the results are available to Railtrack no later than, and as early as reasonably practicable before, the formal submission of plans for Railtrack's approval under paragraph 8 below.

(5) Railtrack shall disclose to the undertaker any similar study undertaken or obtained by it in relation to any project in the harbour and shall, if so required by the undertaker, not unreasonably refuse to accept as sufficient compliance with sub-paragraphs (1) to (3) above a joint study encompassing the requirements of sub-paragraph (3) above or a study which takes as its basis any such similar study which has already been undertaken.

(6) The obligation of disclosure under paragraph (5) above is subject to any requirement of confidentiality applying in relation to any such study, but Railtrack shall use its reasonable endeavours to secure that any such study is not subject to a requirement of confidentiality, or, where it is, to obtain a release from that requirement.

(7) Without prejudice to any other measures which may be required by the engineer under paragraph 9(1) below but subject to the requirement of reasonableness specified in that paragraph, any measures identified in the study as reasonably required in connection with the construction of Work No. 8 shall be treated as protective works which may be required by the engineer under that paragraph.

8.—(1) The undertaker shall before commencing construction of the specified works supply to Railtrack proper and sufficient plans for the reasonable approval of the engineer.

(2) The plans shall provide in particular for—

- (a) the soffit of the tunnel under the railway lines forming part of Work No. 6 and included in plot number 2/8 on the land plans to be no higher than shown on the sections; and
- (b) the fencing off (whether on a temporary or permanent basis or both) of the specified works from railway property where reasonably so required by the engineer (including, if so required, demarcation within the boundaries of railway property) in order to comply with any statutory obligation to fence off railway property.

(3) The specified works shall not be constructed except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration and, in the case of any works subject to railway operational procedures, in compliance with the requirements of those procedures.

(4) The approval of the engineer under this paragraph shall not be unreasonably withheld or delayed and if, within a period of 56 days beginning with the day on which such plans have been supplied to Railtrack, the engineer has not intimated his disapproval of the plans and the grounds of his disapproval he shall be deemed to have approved the plans.

(5) If within a period of 56 days beginning with the day on which such plans have been supplied to Railtrack, it gives notice to the undertaker that it desires itself to construct any part of the specified works, being works which do not form part of the tunnel and which in the opinion of the engineer

will or may affect the stability of railway property or the safe operation of traffic on any railway of Railtrack, then, if the undertaker desires such part of the specified works to be constructed, Railtrack shall construct that part, with all reasonable despatch, on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled and under the supervision (where appropriate and if given) of the undertaker.

(6) In the event of Railtrack not constructing or completing any part of the specified works pursuant to sub-paragraph (5) above with reasonable despatch and to the reasonable satisfaction of the undertaker in accordance with such programme as may be agreed with the undertaker or settled by arbitration, Railtrack shall pay compensation to the undertaker for any loss which it may thereby reasonably sustain.

9.—(1) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works or other alterations or additions to railway property (whether temporary or permanent) which in his reasonable opinion should be carried out in consequence of the specified works, either before the commencement, during the construction or within 12 months of completion of the specified works, in order to ensure the safety or stability of railway property, the continued safe and efficient operation of railway property or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by the specified works).

(2) Subject to compliance where applicable with railway operational procedures all such works specified by the engineer under sub-paragraph (1) above as may be agreed by the undertaker or, failing agreement, settled by arbitration, shall be constructed by Railtrack or, if Railtrack so desires, by the undertaker with all reasonable despatch during the period agreed or settled for such works.

(3) In the case of any such works required to be carried out before the commencement of the specified works, the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that those works have been completed to his reasonable satisfaction.

(4) In the event of Railtrack not constructing or completing any such works with reasonable despatch as required by sub-paragraph (2) above, in accordance with such programme as may have been agreed with the undertaker or settled by arbitration, Railtrack shall pay compensation to the undertaker for any loss which the undertaker may thereby reasonably sustain.

(5) If any other alterations, either permanent or temporary, to railway property are 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, the engineer may give notice to the undertaker specifying the alterations or additions to be carried out and sub-paragraph (2) above shall apply to works specified under this sub-paragraph as it applies to works specified under sub-paragraph (1) above.

10. The undertaker shall give to the engineer not less than 28 days' notice of its intention to commence the construction of any of the specified works and also, except in emergency (when it shall give such notice as may be reasonably practicable), of its intention to carry out any works for the alteration or reconstruction of the specified works in so far as such works of alteration or reconstruction affect or interfere with railway property.

11. The specified works shall, when commenced, be constructed—

- (a) with all reasonable despatch in accordance with the plans approved or deemed to have been approved or settled in accordance with the requirements of this Schedule;
- (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 to railway property as reasonably practicable; and

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- (d) so far as is reasonably practicable and consistent with the efficient and economic construction and operation of the specified works, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway or the traffic thereon the operation of any station and the use by passengers of railway property;

and, if any damage to railway property is caused or takes place during and in consequence of the construction of the specified works, the undertaker shall, (so far as consistent with the plans as approved, deemed to have been approved or settled) make good such damage.

12. The undertaker shall—

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

13. 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 Schedule 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 of those works.

14. Before either Railtrack or the undertaker provide any new illumination or illuminated traffic sign at or in the vicinity of Fareham station, it shall consult the other and comply with any reasonable requirements of that other party made for the purpose of preventing confusion between such illumination or illuminated sign and any signal or other light used for controlling, directing or securing the safety of traffic on the railway or the authorised transit system as the case may be.

15. If at any time after completion of the specified works Railtrack gives notice to the undertaker that the state of maintenance of any part of the specified works not vested in Railtrack appears to be such as adversely affects the operation of railway property, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put and keep that part of the specified works in such state of maintenance as shall not affect railway property adversely.

16.—(1) Subject to paragraph 19 below, the undertaker shall pay to Railtrack—

- (a) all reasonable costs, charges and expenses incurred by Railtrack and its engineer in considering proposals and giving approval to plans submitted under paragraphs 6 and 8 above (other than in respect of any arbitration), in supplying information under paragraph 19 below, in complying with railway operational procedures in connection with the specified works and, where appropriate, in supervising and monitoring the construction of the specified works;
- (b) all reasonable costs, charges and expenses incurred by Railtrack in constructing any part of the specified works on behalf of the undertaker as provided by paragraph 8(5) above or in constructing any protective or other works under the provisions of paragraph 9 above;
- (c) any additional costs and any losses reasonably incurred by Railtrack by reason of the construction or maintenance of the specified works; and
- (d) any loss or damage occasioned to Railtrack and caused by reason of the failure of the specified work.

(2) The compensation payable under this paragraph shall include a sum equivalent to the relevant costs.

(3) Subject to the terms of any agreement between Railtrack and the operator of a railway asset regarding the terms of payment of the relevant costs in respect of that operator, Railtrack shall promptly pay to each such operator the amount of any compensation which Railtrack receives under this paragraph which relates to the relevant costs of that operator.

(4) The obligation on the undertaker under this paragraph to pay Railtrack the relevant costs shall, in the event of default by the undertaker, be enforceable direct by the operator concerned against the undertaker.

(5) In this paragraph “relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each operator as a consequence of any restriction of use of a station or Railtrack’s network as a result of the construction or maintenance of the specified works or any such failure of the specified works as is mentioned in sub-paragraph 1(d) above.

(6) The sums payable under this paragraph shall include a capitalised sum in respect of the additional cost to Railtrack of—

- (a) maintaining and renewing any protective works or other additions or alterations to railway property; and
- (b) altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of the specified works.

17. Railtrack shall, on receipt of a request of a receipt from the undertaker, from time to time provide the undertaker free of charge with written estimates of its costs, charges, expenses and other liabilities for which the undertaker is or will become liable under paragraph 16 above and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made pursuant to that paragraph.

18. The undertaker shall indemnify Railtrack from and against all claims and demands arising out of or in connection with the specified works and the fact that any act or thing may have been done by Railtrack 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 shall not (if it was done without negligence on the part of Railtrack or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this paragraph.

19. Railtrack shall give to the undertaker reasonable notice of any claim or demand of the type mentioned in paragraph 18 and no settlement or compromise of any such claim or demand shall be made without the prior consent of the undertaker who, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

20. In the assessment of any sums payable to Railtrack under this Schedule there shall 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 Railtrack if that action or agreement was not reasonably necessary or was taken or entered into with a view to obtaining payment of those sums or increasing the sums so payable.

21. Nothing in this Schedule shall impose any liability on the undertaker with respect to any damage, cost, expense or loss which is attributable to the negligence of Railtrack or of any person in its employ or its contractors or agents.

22. If the cost to Railtrack of maintaining, working or removing railway property is reduced in consequence of anything done under or pursuant to this Schedule, a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to Railtrack under paragraph 16(6) above.

This note is not part of the Order. This Order authorises Hampshire County Council and Portsmouth City Council, acting jointly, to construct and operate a rapid transit system between Fareham, Gosport and Portsmouth (including a tunnel under Portsmouth harbour) and, for that purpose compulsorily or by agreement to acquire land and rights in land. It contains a number of protective provisions for the benefit of affected undertakings.

Copies of the works plans, the sections, the land plans and the book of reference are available for public inspection free of charge during working hours at—

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