

SCHEDULES

SCHEDULE 12

Articles 20 and 42

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the undertakers referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between Network Rail and the undertaker concerned, have effect.

2. The provisions of paragraph 1 of Schedule 11 (provisions relating to statutory undertakers etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

3. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(1)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

(1) 1989 c. 29.

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“undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
 - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986(2);
 - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
 - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised works, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

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

5. Regardless of any provision in this Order or anything shown on the land plans, Network Rail must not acquire any apparatus otherwise than by agreement.

6.—(1) If, in the exercise of the powers conferred by this Order, Network Rail acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) Network Rail must, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question must, on receipt of a written notice to that effect from Network Rail, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Network Rail or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by Network Rail to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if Network Rail gives notice in writing to the undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of Network Rail, that work, instead of being executed by the undertaker, must be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(2) 1986 c. 44.

(7) Nothing in sub-paragraph (6) authorises Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of Network Rail, the arbitrator must—

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by Network Rail in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by Network Rail to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 6(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 6(2), Network Rail must submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works are to be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, paragraphs 1 to 7 apply as if the removal of the apparatus had been required by Network Rail under paragraph 6(2).

(5) Nothing in this paragraph precludes Network Rail from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) Network Rail is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the undertaker in question notice as soon as is reasonably practicable and

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a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

9.—(1) Subject to the following provisions of this paragraph, Network Rail must repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any such works as are referred to in paragraph 6(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 44 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works under sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 6(2) any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker or there is any interruption in any service provided or in the supply of any goods, by any undertaker Network Rail must—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

(3) An undertaker must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of Network Rail which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions, unless otherwise agreed in writing between Network Rail and the operator, have effect.

(2) In this Part of this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽³⁾;

“electronic communications code network” means—

(a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

13.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised works or their construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or

(b) there is any interruption in the supply of the service provided by an operator,

Network Rail must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—

(3) See section 106.

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- (i) make reasonable compensation to an operator for loss sustained by it; and
- (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence, of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on Network Rail with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of Network Rail which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between Network Rail and the operator under this paragraph is to be referred to and settled by arbitration under article 44 (arbitration).

14. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between Network Rail and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

15. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Network Rail and an operator in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.

PART 3

FOR THE PROTECTION OF LEAD LOCAL FLOOD AUTHORITIES

16.—(1) The following provisions of this Part of this Schedule apply for the protection of the lead local flood authority unless otherwise agreed in writing between Network Rail and the lead local flood authority.

(2) In this Part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” are construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any ordinary watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence;

“lead local flood authority” means in relation to an ordinary watercourse the lead local flood authority concerned within the meaning of section 23 of the Land Drainage Act 1991(4);

“ordinary watercourse” has the meaning given by the Land Drainage Act 1991;

“plans” includes sections, drawings, specifications and method statements; and

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to affect any drainage work.

(4) 1991 c.59. Section 23 was amended by section 120 of, and paragraph 192 of Schedule 22 to, the Environment Act 1995 (c. 25), paragraphs 25 and 32 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.

17.—(1) Before beginning to construct any specified work, Network Rail must submit to the lead local flood authority plans of the specified work and such further particulars available to it as the lead local flood authority may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the lead local flood authority, or determined under paragraph 24.

(3) Any approval of the lead local flood authority required under this paragraph—

- (a) must not be unreasonably withheld or delayed and must not be withheld in respect of a design which accords with the design drawings;
- (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval, or submission of further particulars if required by the lead local flood authority under sub-paragraph (1), and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
- (c) may be given subject to such reasonable requirements as the lead local flood authority may make for the protection of any drainage work.

(4) The lead local flood authority must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

18. Without limitation on the scope of paragraph 17, the requirements which the lead local flood authority may make under that paragraph include conditions requiring Network Rail at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

19.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the lead local flood authority under paragraph 18, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the lead local flood authority,

and an officer of the lead local flood authority is entitled to watch and inspect the construction of such works.

(2) Network Rail must give to the lead local flood authority not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work or any protective work required by the lead local flood authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the lead local flood authority may by notice in writing require Network Rail at Network Rail's own expense to comply with the requirements of this Part of this Schedule.

20.—(1) Subject to sub-paragraph (3) Network Rail must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation on land held by Network Rail for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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(2) If any such drainage work which Network Rail is liable to maintain is not maintained to the reasonable satisfaction of the lead local flood authority, the lead local flood authority may by reasonable notice in writing require Network Rail to repair and restore the work, or any part of such work, or (if Network Rail so elects and the lead local flood authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the lead local flood authority reasonably requires.

(3) This paragraph does not apply to—

- (a) drainage works which are vested in the lead local flood authority, or which the lead local flood authority or another person is liable to maintain and is not proscribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

21. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by Network Rail to the reasonable satisfaction of the lead local flood authority and if Network Rail fails to do so, the lead local flood authority may make good the impairment or damage and recover from Network Rail the expense reasonably incurred by it in doing so.

22. Network Rail must pay all costs, charges and expenses which the lead local flood authority may reasonably incur or have to pay—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the lead local flood authority under this Part of this Schedule.

23. The fact that any work or thing has been executed or done by Network Rail in accordance with a plan approved or deemed to be approved by the lead local flood authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve Network Rail from any liability under the provisions of this Part of this Schedule.

24. Any dispute arising between Network Rail and the lead local flood authority under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 44 (arbitration).

PART 4

FOR THE PROTECTION OF THE MANCHESTER SHIP CANAL COMPANY LIMITED

25.—(1) For the protection of the Manchester Ship Canal Company Limited the following provisions of this Part of this Schedule, unless otherwise agreed in writing between Network Rail and MSCC, have effect.

(2) In this Part of this Schedule—

“construction”, in relation to any specified work or protective work, includes execution, placing, altering, replacing, relaying and removal, and “construct” and “constructed” are construed accordingly;

“detriment” means any physical damage to the River wholly or partly caused by the specified works which affects the stability, structure and safety of the River and, without limitation on the scope of that meaning, includes—

- (a) the erosion of the bed, banks or walls of the River, or the impairment of the stability of any works or lands forming part of the River;

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- (b) the silting of the River or the deposit of materials in the River so as to damage the River;
- (c) the pollution of the River; and
- (d) any alteration in the water level of the River, or interference with the supply of water to the River, or drainage from the River;

“MSCC” means the Manchester Ship Canal Company Limited (company registration number 07438096) whose registered address is at Maritime Centre, Port of Liverpool, Liverpool, Merseyside, L21 1LA, and its statutory successors;

“plans” includes sections, drawings, specifications, calculations, soil reports, descriptions (including descriptions of methods of construction), risk assessments and method statements but does not include the design and appearance of the specified works;

“protective work” means a work which is reasonably necessary to be carried out to minimise or prevent detriment constructed under paragraph 28(3)(a);

“the River” means the River Irwell for which the MSCC is the harbour authority; and

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

26. Network Rail must not under the powers conferred by this Order acquire compulsorily any land of MSCC or any easement or other right over such land, other than such land or easements or other rights over such land, as is reasonably necessary for, or in connection with, the construction, maintenance or operation of the authorised works.

27. Where so required by MSCC for the purpose of ensuring the safety of the River, Network Rail must, to the reasonable satisfaction of MSCC, fence off any specified work or protective work or take such steps as MSCC may reasonably require to be taken for the purpose of separating a specified work or a protective work from the River, whether on a temporary or permanent basis or both.

28.—(1) Network Rail must, before commencing construction of any specified work, including any temporary works, supply to MSCC proper and sufficient plans of that work and such further particulars available to it as MSCC may within 14 days of the submission of the plans reasonably require for the reasonable approval, subject to sub-paragraphs (2) and (6), of MSCC and must not commence the construction of any specified work except in accordance with such plans as have been approved or deemed to have been approved or settled by arbitration.

(2) The approval of MSCC under sub-paragraph (1) must not be unreasonably withheld or delayed, and if within 28 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to MSCC they have not intimated disapproval of those plans and the grounds of disapproval MSCC is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans MSCC may specify—

- (a) any protective work to be carried out before the commencement of a specified work (whether temporary or permanent) that may be reasonably required to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment but not involving alteration to the design of the specified work,

and such protective work must be constructed by Network Rail or (if Network Rail so elects) MSCC without unnecessary delay and Network Rail must not commence the construction of any specified work until MSCC has notified Network Rail that the protective work has been completed to MSCC’s reasonable satisfaction.

(4) The approval of MSCC under sub-paragraph (3) is not to be unreasonably withheld or delayed, and if by the end of the period of 7 days beginning with the date on which MSCC is notified of

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the completion of such protective work MSCC has not intimated disapproval and the grounds of disapproval MSCC is deemed to have approved the protective work.

(5) MSCC must at all times afford reasonable facilities to Network Rail and its agents for access to any protective works carried out by MSCC under this paragraph during their construction and must supply Network Rail with such information as it may reasonably require with regard to such protective works or the method of constructing them.

(6) Where the design of any work is shown on the design drawings, MSCC must not disapprove under sub-paragraph (1) plans for that work which accord with those drawings, although any approval may contain specifications under sub-paragraph (3).

29. Subject to article 20 (temporary interference with river and waterway), Network Rail must not impede, obstruct or interfere with, as far as reasonably practicable, the free, uninterrupted and safe use of the River.

30. Network Rail must provide and maintain at its own expense in the vicinity of any specified work or protective work such temporary lighting from sunset to sunrise or other periods of adverse visibility as MSCC may reasonably require during the construction or failure of the specified work or protective work.

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

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled by arbitration and with any requirements made under paragraph 28(3) (b);
- (b) under the supervision (if given), and in the case of any specified work which directly and physically affects the River, to the reasonable satisfaction of MSCC;
- (c) in such a manner as to cause as little detriment as is reasonably practicable to the River;
- (d) so far as is reasonably practicable and subject to article 20 (temporary interference with river and waterway), so as not to interfere with, delay or obstruct the safe passage of vessels using the River; and
- (e) in such a manner as to cause as little inconvenience as is reasonably practicable to MSCC, its officers and agents.

(2) Following the completion of the construction of any specified work Network Rail must restore the River to a condition no less satisfactory than its condition immediately prior to the commencement of those works subject to the presence of the works authorised by this Order.

32.—(1) Network Rail must not in the course of constructing any specified work or protective work or otherwise in connection with such works do or permit anything which may result in the deposit of any polluting materials on, in or over the River and must take such steps as MSCC may reasonably require to avoid or make good any breach of its obligations under this paragraph.

(2) Nothing in article 17 (discharge of water) authorises Network Rail to discharge (directly or indirectly) surface drainage water into the River without the written consent of MSCC (such consent not to be unreasonably withheld).

(3) Network Rail must not in the course of constructing any specified work or protective work or otherwise in connection with such works do or permit anything which may result in the deposit of any other materials in the River and must take such steps as MSCC may reasonably require to avoid or make good any breach of its obligations under this paragraph except that with the written consent of MSCC Network Rail may deposit any other materials into the River.

(4) Any consent of MSCC required under this paragraph must not be unreasonably withheld or delayed and may be given subject to such terms and conditions as MSCC may reasonably require including—

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- (a) in the case of a discharge of water into the River, concerning the reimbursement by Network Rail of expenses incurred by MSCC in disposing of the water so discharged, being expenses which MSCC would not have incurred but for the discharge; and
- (b) in the case of a deposit of any other materials, so as to ensure that the use of the River is not obstructed or rendered less safe and the reimbursement by Network Rail of additional expenses incurred by MSCC in dredging the River, being expenses which MSCC would not have incurred but for the deposit of other materials.

33.—(1) Network Rail, on being given reasonable notice (except in cases of emergency), must at all reasonable times allow reasonable facilities to MSCC for access to inspect any specified work during its construction.

(2) Network Rail must supply MSCC with all such information as MSCC may reasonably require with regard to any specified work or the method of constructing it.

34.—(1) If any reasonable alterations or additions, either permanent or temporary, to the River are necessary in consequence of the construction of the specified work in order to avoid detriment and MSCC gives to Network Rail reasonable notice (being not less than 28 days) of its intention to carry out such alterations or additions (which must be specified in the notice), and takes into account any reasonable representations Network Rail may make to the notice within 21 days of receipt of the notice, Network Rail must pay to MSCC, provided that 28 days' notice has been given to Network Rail, the cost of those alterations or additions reasonably incurred including, in respect of permanent alterations and additions, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by MSCC in maintaining, working and, when necessary, renewing any such alterations or additions.

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

35.—(1) Network Rail must, upon completion of any part of a specified work and after the purpose of any temporary works has been accomplished, remove as soon as practicable any temporary works constructed and materials for temporary works placed in, on or over the River in connection with that part of the specified work.

(2) All temporary works must be removed to the reasonable satisfaction of MSCC and in such a way as causes as little detriment or interference as reasonably practicable with, or delay or interruption to, the safe passage of vessels along the River.

(3) In the event of any detriment to the River or interference with, or delay or interruption to, any vessels on the River that is caused by Network Rail's failure to remove any such temporary works, Network Rail must immediately make good such damage and pay to MSCC the costs and expenses to which it may be put and compensation for any loss which it may suffer by reason of such detriment, interference, delay or interruption.

(4) In the event of Network Rail failing to remove the temporary works within a reasonable period after receiving notice from MSCC, MSCC may remove those works and charge Network Rail the costs and expenses reasonably incurred as a result.

36. If at any time after the completion of a specified work, not being a work vested in MSCC, MSCC gives notice to Network Rail informing it that the state of maintenance of the specified work appears to be such that the specified work is causing or is likely to cause detriment, Network Rail must, on receipt of such notice, take such steps as may be reasonably necessary to put the specified work in such state of maintenance as not to cause such detriment.

37. Network Rail must repay to MSCC all costs, charges and expenses reasonably and properly incurred by MSCC—

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- (a) in constructing any protective work under the provisions of paragraph 28(3)(a) including, in respect of any permanent protective work, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the employment of any inspectors, watchguards and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any part of the River affected by any specified work or protective work and for preventing as far as may be practicable all interference, obstruction, danger or accident arising from the construction, maintenance, renewal, repair or failure of the specified work or any protective work;
- (c) in respect of the approval by MSCC of plans submitted by Network Rail and the supervision by MSCC of any specified work or any protective work; and
- (d) in bringing the specified work or any protective work to the notice of users of the River.

38.—(1) If any detriment to the River or any interference with, or delay or obstruction to, any vessels on the River is caused by, or arises as a result of, the construction or failure of any specified work or protective work carried out by Network Rail, Network Rail or (if MSCC so elects) MSCC (but at Network Rail's expense), must immediately make good such detriment and Network Rail must on demand pay to MSCC all reasonable expenses to which MSCC may be put, and compensation for any loss which MSCC may sustain, in making good or otherwise by reason of any such detriment, interference, delay or obstruction.

(2) Network Rail is responsible for and must make good to MSCC all claims, demands, proceedings, costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule or in accordance with paragraph (3) of article 20 (temporary interference with river and waterway) which may be occasioned to or reasonably incurred by MSCC—

- (a) by reason of the construction or failure of any specified work or a protective work;
- (b) by reason of any planned closure of the River, as a result of the construction or failure of any specified work or a protective work, or of any closure which is not in accordance with the provisions of this Part of this Schedule;
- (c) by reason of any planned closure of the River over-running, as a result of the construction or failure of any specified work or a protective work; and
- (d) by reason of any act or omission of Network Rail or of any person in its employ or of its contractors or others whilst engaged upon the construction of any specified work or of a protective work,

and subject to sub-paragraph (4) Network Rail must effectively indemnify and hold harmless MSCC from and against all charges, claims, demands, expenses and liabilities arising out of any of the matters referred to in paragraphs (a), (b), (c) and (d).

(3) Nothing in this paragraph imposes any liability on Network Rail with respect to any losses, costs, charges, damages, expenses, claims or demand referred to in sub-paragraph (2) to the extent that they are attributable to negligence on the part of MSCC or of any person in its employ or its contractors or agents.

(4) The fact that any act or thing may have been done by MSCC on behalf of Network Rail does not (if it was done without negligence on the part of MSCC or any person in its employ or its contractor or agents) excuse Network Rail from any liability under the provisions of this paragraph.

(5) MSCC must give to Network Rail reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand must be made without the prior consent in writing of Network Rail (which must not be unreasonably withheld) which, if it notifies MSCC that it desires to do so, must have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand provided that no settlement or compromise of any such claim or demand is to be made without the consent of MSCC (which must not be unreasonably withheld). If consent is not given by Network Rail, MSCC must diligently defend such claim or demand.

39. Where under any provision of this Part of this Schedule MSCC or Network Rail (as the case may be) is entitled to a capitalised sum, it must provide such details of the formula by which the sum is calculated as may reasonably be requested by the party required to pay the sum.

40. Except as provided by this Order, nothing in this Order prejudices or derogates from the estates, rights, interests, privileges, liberties or franchises of MSCC or alters or diminishes any power, authority or jurisdiction vested in MSCC at the making of this Order.

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

PART 5

FOR THE PROTECTION OF THE CANAL & RIVER TRUST

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

(2) In this Part of this Schedule—

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any relaying, renewal or maintenance of that work as may be carried out during the period of 24 months from the completion of that work,

and “construct” and “constructed” are construed accordingly;

“detriment” means any damage to the waterway or any other property of the Trust and, without limitation on the scope of that meaning, includes—

- (a) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (b) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (c) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (d) the pollution of the waterway;
- (e) any significant alteration in the water level of the waterway, or significant interference with the supply of water to it, or drainage of water from it;
- (f) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Trust’s network); and
- (g) any interference with the exercise by any person of rights over the Trust’s network;

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

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

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” are to be construed accordingly;

“protective work” means a work constructed under paragraph 47(3)(a);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of the waterway, or may in any way affect the waterway;

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“towing path” means the towing path forming part of the waterway;

“the Trust” means the Canal & River Trust;

“the Trust’s network” means the Trust’s network of waterways; and

“the waterway” means the Manchester, Bolton and Bury Canal, and includes any works, lands or premises belonging to the Trust, or under its management or control, that are held or used by the Trust in connection with that canal.

43.—(1) Network Rail must not under the powers conferred by this Order acquire compulsorily any land of the Trust or any easement or other right over such land, or use any such land, unless such acquisition or use is with the consent of the Trust.

(2) Network Rail must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Trust.

(3) Network Rail must not exercise the powers conferred by article 12(1) (temporary stopping up of streets) in relation to any way over land comprised in the waterway unless such exercise is with the consent of the Trust.

(4) Nothing in article 20 (temporary interference with river and waterway) authorises Network Rail—

(a) to discharge any water directly or indirectly into the waterway; or

(b) to carry out any works to, or make any opening in, or otherwise interfere with, the waterway (including its banks and bed),

except with the consent of the Trust and on terms that the Trust may reasonably require, and in accordance with plans approved by, and under the supervision (if given) of the engineer.

(5) Network Rail must not exercise any power conferred by this Order in such a way as to interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Trust.

(6) Network Rail must not exercise the powers conferred by article 19 (power to survey and investigate land) and the powers conferred by article 20, or section 11(3) (powers of entry) of the 1965 Act in relation to the waterway unless such exercise is with the consent of the Trust.

(7) The consent of the Trust under sub-paragraphs (1) to (6) and the approval of plans under sub-paragraph (4) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 17 (discharge of water) may include conditions—

(a) specifying the maximum volume of water which may be discharged in any period; and

(b) authorising the Trust on giving reasonable notice (except in an emergency, when the Trust may require immediate suspension) to Network Rail to require Network Rail to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of the Trust.

44. Network Rail must not use any land or property of the Trust forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of a specified work other than—

(a) with the consent in writing of the engineer whose consent must not be unreasonably withheld; and

(b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—

(i) for the prevention of detriment; or

- (ii) in order to avoid or reduce any inconvenience to the Trust, its officers and agents and all other persons lawfully on such land or property,

but nothing in this paragraph applies in relation to anything done in accordance with any approval given by the Trust under paragraph 47.

45. Where so required by the engineer Network Rail must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis.

46.—(1) Before the commencement of the initial construction of any part of the specified work and again following practical completion of the specified work Network Rail must bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Trust and Network Rail, of a survey (including a dip-survey to measure the depth of the waterway and a survey to measure the headroom of the existing road bridge over the waterway) (“the survey”) of so much of the waterway and of any land and works of Network Rail in existence at the date of the coming into force of this Order which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey Network Rail must—

- (a) on being given reasonable notice (except in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of Network Rail which may provide support for the waterway as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as the surveyor may reasonably require with regard to such existing works of Network Rail and to the specified works or the method of their construction.

(3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though those measures were specified works.

(4) Copies of the report of the survey must be provided to both the Trust and Network Rail at no cost to the Trust.

47.—(1) Network Rail must before commencing construction of any specified work including any temporary works supply to the Trust proper and sufficient plans of that work and such further particulars available to it as the Trust may within 14 days of the submission of the plans reasonably require for the approval of the engineer and must not commence such construction of a specified 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) must not be unreasonably withheld or delayed and must not be withheld in respect of a design which accords with the design drawings, and if within 56 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to the Trust the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer is deemed to have approved the plans as submitted.

(3) When signifying approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

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and such protective works must be constructed by Network Rail or by the Trust at Network Rail's request with all reasonable dispatch and Network Rail must not commence the construction of a specified work until the engineer has notified Network Rail that the protective works have been completed to the engineer's reasonable satisfaction.

48. Without affecting its obligations under the provisions of this Part of this Schedule Network Rail must consult, collaborate with and respond constructively to any approach, suggestion, proposal or initiative made by the Trust on—

- (a) the design and appearance of any specified works, including the materials to be used for their construction; and
- (b) the environmental effects of the specified work,

and must have regard to such views as may be expressed by the Trust, to the extent that these accord with the design drawings and the requirements of the local planning authority, in response to such consultation pursuant in particular to the requirements imposed on the Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995⁽⁵⁾ and to the interest of the Trust in preserving and enhancing the environment of its waterways.

49. Network Rail must give to the engineer 56 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Trust's network.

50. Network Rail must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

51.—(1) Any specified or protective works must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled in accordance with this Part of this Schedule and with any requirements made under paragraph 47(3) and paragraph 48;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable; and
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the waterway, except to the extent that temporary obstruction has otherwise been agreed by the Trust.

(2) Nothing in this Order authorises Network Rail to make or maintain any permanent works in or over the waterway which will reduce the dimensions of the waterway or prevent the passage of any vessel which is at the date of this Order able to navigate along the waterway.

(3) Following the completion of the construction of the specified works Network Rail must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

52. Network Rail must not in the course of constructing a specified work or a protective work or otherwise in connection with those works do or permit anything which may result in the pollution of the waterway or the deposit of materials in it and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

53.—(1) Network Rail on being given reasonable notice must—

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- (a) at all times allow reasonable facilities to the engineer for access to a specified work during its construction; and
 - (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.
- (2) The Trust on being given reasonable notice must—
- (a) at all times afford reasonable facilities to Network Rail and its agents for access to any works carried out by the Trust under this Part of this Schedule during their construction; and
 - (b) supply Network Rail with such information as it may reasonably require with regard to such works or the method of constructing them and Network Rail must reimburse the Trust's reasonable costs in relation to the supply of such information.

54. If at any time after the completion of a specified work or a protective work, not being a work vested in the Trust, the Trust gives notice to Network Rail informing it that the state of maintenance of the work appears to be such that the work is causing or likely to cause detriment, Network Rail must, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

55. Network Rail must repay to the Trust all fees, costs, charges and expenses reasonably incurred by the Trust—

- (a) in constructing any protective works under paragraph 47(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by Network Rail and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of the Trust's network.

56.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works carried out by Network Rail, Network Rail (if so required by the Trust) must make good such detriment and pay to the Trust all reasonable expenses to which the Trust may be put, and compensation for any loss which the Trust may sustain, in making good or otherwise by reason of the detriment.

(2) Network Rail is responsible for and must make good to the Trust all costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by the Trust—

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

and subject to sub-paragraph (4) Network Rail must effectively indemnify and hold harmless the Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b).

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(3) The fact that any act or thing may have been done by the Trust on behalf of Network Rail or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision or in accordance with any directions or awards of an arbitrator does not (if it was done without negligence on the part of the Trust or of any person in its employ or of its contractors or agents) excuse Network Rail from any liability under the provisions of this paragraph.

(4) The Trust must give Network Rail 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.

57. Any difference arising between Network Rail and the Trust 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).