

SCHEDULES

SCHEDULE 19

PROTECTIVE PROVISIONS

PART 5

FOR THE PROTECTION OF THE TRUST

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

(2) In this Schedule—

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

- (a) the execution and placing of that work; and
- (b) any replacing, relaying, removal, alteration, renewal, maintenance, repair or reconstruction of that work as may be carried out during the period of 12 months from the completion of the work;

and “construct” and “constructed” have corresponding meanings;

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

- (a) the erosion of the bed or banks of the waterways, or the impairment of the stability of any works, lands or premises forming part of the waterways;
- (b) the silting of the waterways or the deposit of materials in the waterways so as to permanently damage the waterways;
- (c) the pollution of the waterways;
- (d) any permanent alteration in the water level of the waterways, or permanent interference with the supply of water to the waterways, or drainage of water from it; and
- (e) any permanent harm to the ecology of the waterways (including any permanent adverse impact on any site of special scientific interest comprised in the waterways);

“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;

“protective work” means a work which is reasonably necessary to be carried out before the commencement of construction of any specified work to prevent detriment;

“specified work” means so much of any of the authorised works as is situated upon, a cross under, over or within 15 metres of, or may directly and physically affect, the waterways; and

“the waterways” means the Huddersfield Broad Canal and the Calder and Hebble Navigation, and includes any works, lands or premises belonging to the Trust, or under its management or control, that are held and used by the Trust in connection with the waterways.

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40. 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, 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.

41.—(1) Network Rail must not in the exercise of the powers conferred by this Order permanently obstruct or interfere with pedestrian or vehicular access to the waterways unless such permanent obstruction or interference with such access is with the consent of the Trust.

(2) Nothing in article 22 (discharge of water) authorises Network Rail—

- (a) to discharge any water directly or indirectly into the relevant part of the waterway; or
- (b) to carry out any works to, or make any opening in, or otherwise interfere with, the relevant part of the waterway (including the banks and bed thereof),

except with the consent of the Trust and in accordance with plans approved by, and under the supervision (if given) of, the engineer.

(3) Network Rail must not exercise the powers conferred by article 23 (protective works to buildings, roads and apparatus of a statutory undertaker) in relation to any building forming part of the waterways, or situated on land or property of the Trust forming part of the waterways, except with the consent of the Trust.

(4) Network Rail must not exercise the powers conferred by article 24 (power to survey and investigate land) or the powers conferred by section 11(3) of the 1965 Act in relation to the waterways except with the consent of the Trust.

(5) Network Rail must not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 18 to this Order, so as to permanently divert any right of access to the waterways, but any such right of access may be permanently diverted with the consent of the Trust.

(6) The consent of the Trust under any of sub-paragraphs (1), (3), (4) and (5) and the approval of plans under sub-paragraph (2) must not be unreasonably withheld or delayed but may be given subject to reasonable conditions which in the case of article 22 (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 requirement of the Trust and where a reasonable alternative is available to enable Network Rail to discharge the water in question during the period of the suspension.

42. Network Rail must not use any land or property of the Trust forming part of the waterways for the passage or siting of vehicles, plant or machinery employed in the construction of the 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.

43. If in consequence of or in connection with the exercise of the powers conferred by this Order any part of a way over land forming part of the waterways or any public right of way giving access to the waterways (“the closed section”) is temporarily closed to persons on foot or on cycles and there

is no way which provides a reasonable alternative, Network Rail must to the reasonable satisfaction of the Trust, provide in substitution as sufficient and convenient a way as is reasonably practicable between the points of commencement and termination of the closed section for such time as the closure continues.

44. Where so required by the engineer Network Rail must, to the reasonable satisfaction of the engineer, fence off any specified work or 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 waterways, whether on a temporary or permanent basis or both.

45.—(1) Before the commencement of the initial construction of any part of the specified works and again following completion of the specified works Network Rail must bear the reasonable costs of the carrying out, by a qualified surveyor or engineer (“the surveyor”) to be approved by the Trust and Network Rail, of surveys (“the surveys”) of so much of the waterways and of any land and existing works of Network Rail which may provide support for the waterways as will or may be affected by the specified works.

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

- (a) on being given reasonable notice (save 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 waterways 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 land and existing works of Network Rail and to the specified works or the method of their construction.

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

(4) Copies of the reports of the surveys must be provided to both the Trust and Network Rail.

46.—(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 any 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, if and 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 his approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent); and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective work must be constructed by the Trust or (if the Trust so desires) by Network Rail with all reasonable dispatch and Network Rail must not commence the construction of any specified work until the engineer has notified Network Rail that the protective work has been completed to the engineer’s reasonable satisfaction.

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47. Without affecting its obligations under the provisions of this Part of this Schedule Network Rail must consult the Trust on—

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

and must have regard to such views as may be expressed by the Trust, to the extent that these accord with 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⁽¹⁾ and to the interest of the Trust in preserving and enhancing the environment of the relevant part of the waterway.

48. Network Rail must give to the engineer 56 days' notice of its intention to commence the construction of any of the specified works 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 waterways.

49. Network Rail must provide and maintain at its own expense in the vicinity of any specified works or protective work 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 work or protective work.

50. Any specified 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 Schedule and with any requirements made under paragraph 46(3)(b);
- (b) under the supervision (if given) and, in the case of any specified work which directly and physically affects the relevant part of the waterway, 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 waterways.

51.—(1) Any pile, stump or other obstruction which becomes exposed in consequence of the construction of a specified work must be removed by Network Rail or, if it is not reasonably practicable to remove it, must be cut off at such level below the bed of the waterways as the Trust may direct.

(2) If Network Rail fails to remove any such pile, stump or other obstruction within 28 days after receipt of written notice from the Trust requiring the removal, the Trust may carry out the removal and recover its costs from Network Rail.

52. Network Rail must not in the course of constructing any specified work or protective work or otherwise in connection with the works do or permit anything which may result in the pollution of the waterways or the deposit of materials in the waterways and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph; but this provision does not prevent Network Rail from carrying out works within the waterways.

53.—(1) Network Rail must at all times on being given reasonable notice allow reasonable facilities to the engineer for access to any specified work during its construction; but such facilities

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for access are subject to Network Rail's reasonable requirements for ensuring the safety of the railway and of the engineer and other persons working on the railway.

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

54.—(1) If during the construction of a specified work or during a period of 24 months after the completion of a specified work any alterations or additions, either permanent or temporary, to the waterways are reasonably necessary in consequence of the construction of the specified work in order to avoid detriment, and the Trust gives to Network Rail reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), Network Rail must pay to the Trust the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Trust in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the waterways is reduced in consequence of any such alterations or additions a capitalised sum representing such saving must be set off against any sum payable by Network Rail to the Trust under this paragraph.

55.—(1) Network Rail must, upon completion of any part of any permanent specified work, remove as soon as practicable any temporary works constructed and materials for temporary works placed in, on, over or under the waterways in connection with that part of the specified work.

(2) All temporary works must be removed to the reasonable satisfaction of the engineer, and in the construction, maintenance and removal of such works Network Rail must not cause unavoidable detriment.

56. If at any time after the completion of a specified 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 is 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.

57. Any additional expenses which the Trust may reasonably incur in maintaining the waterways under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such maintenance has been given to Network Rail, be repaid by Network Rail to the Trust.

58. 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 the provisions of paragraph 46(3)(a) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (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 any specified work and any protective work;
- (c) in respect of the employment during the period of the initial construction of any specified work or protective work of any inspectors, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any part of the waterways and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified work or any protective work; and
- (d) in bringing the specified work or any protective work to the notice of users of the waterways.

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59.—(1) If any detriment is caused by the construction or failure of any specified work or protective work, Network Rail (if so required by the Trust) must make good such detriment and must 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 any 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 any specified work or of 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 any of the matters referred to in paragraphs(a) and (b).

(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.

60. Where under any provision of this Part of this Schedule the Trust 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.

61. Except as provided by this Order, nothing in this Order is to prejudice or derogate from the estates, rights, interests, privileges, liberties or franchises of the Trust or alter or diminish any power, authority or jurisdiction vested in the Trust at the making of this Order.

62. Any difference arising between Network Rail and the Trust under this Schedule (other than a difference as to the meaning or construction of this Schedule) is to be referred to and settled by arbitration in accordance with article 57 (arbitration).

63. Nothing in this Part of the Schedule affects the provision of any enactment or agreement regulating the relations between Network Rail and the Trust in respect of the waterways or any land and existing works of Network Rail adjacent to, under or over the waterways which have effect on the date on which this Order is made.