

Dated

2 June

2021

**APPLICATION BY NNB GENERATION COMPANY (SZC) LIMITED FOR AN
ORDER GRANTING DEVELOPMENT CONSENT FOR THE SIZEWELL C
PROJECT SCHEME**

PLANNING INSPECTORATE REFERENCE NUMBER: EN010012

REGISTRATION IDENTIFICATION NUMBER: 20026630

**WRITTEN REPRESENTATION
submitted on behalf of Network Rail
Infrastructure Limited**

1 Introduction

- 1.1 This written representation (**Written Representation**) is submitted on behalf of Network Rail Infrastructure Limited (**Network Rail**) in response to the application by NNB Generation Company (SZC) Limited (**Applicant**) for the Sizewell C (Nuclear Generating Station) Development Consent Order (**Proposed DCO**).
- 1.2 The Proposed DCO seeks development consent for the construction of a new nuclear power station comprised of two UK EPR™ units (**Proposed Development**) on land at the Sizewell nuclear site, Sizewell, Leiston in Suffolk (**Site**) as specifically detailed in Schedule 1 of the Proposed DCO.
- 1.3 Network Rail owns, operates and maintains the railway infrastructure of Great Britain. It does so pursuant to a network licence granted under section 8 of the Railways Act 1993 (**Network Licence**). A key element of Network Rail's statutory undertaking and a condition under the Network Licence, is to ensure the safety of the railway and those using and/or operating it.
- 1.4 The Book of Reference includes 18 plots of land owned by Network Rail in respect of which compulsory acquisition powers are sought. The Applicant seeks temporary rights over 16 plots and the permanent acquisition of two plots. There are six main interfaces between the Proposed Development and the operational railway which are set out in detail at paragraph 2.1.
- 1.5 Network Rail submitted its section 56 representation (Examination Library Reference No RR-006) on 30 September 2020 and will submit a further section 56 representation in relation to the Applicant's proposed provision (compulsory acquisition request in respect of additional land – Changes 11, 12 and 13) by the deadline of 7 June 2021.
- 1.6 Network Rail objects to temporary and permanent compulsory powers being granted or executed in respect of Network Rail's land and to the extinguishment of the rights held by Network Rail over operational railway land and third party land on which it relies for the carrying out of its statutory undertaking. However, Network Rail does not object to the principle of the Proposed Development and is willing to enter into agreements with the Applicant to enable the Proposed Development to be carried out while safeguarding Network Rail's undertaking.
- 1.7 Network Rail also objects to the seeking of powers to carry out works under and/or to operational and non-operational railway land belonging to Network Rail without first securing appropriate protective provisions in the Order for Network Rail's statutory undertaking.
- 1.8 Whilst negotiations with the Applicant are in progress and Network Rail is hopeful that its concerns can be resolved during the course of the Examination, in the absence of an agreement that safeguards its interests, Network Rail's objection to the Proposed Development remains and Network Rail requests that the Examining Authority recommend that the protective provisions attached at Appendix 1 (**Protective Provisions**) are included as Part 3 of Schedule 18 to the Order.

2 DCO Powers sought by the Applicant and the impact for Network Rail

Interactions with the railway

- 2.1 The Applicant initially proposed that three freight trains will serve the Proposed Development (six new movements) during the construction and operational phases to assist with a reduction in reliance on road traffic and to reduce the Proposed Development's environmental impacts, following the Change Request detailed at paragraphs 2.5 – 2.8 below, four trains are proposed

with eight new movements a day but with a potential for five trains and ten new movements a day (**Freight Use**). This is, in principle, supported by Network Rail.

- 2.2 Network Rail has freehold and other property interests in 18 plots of land (**Plots**) that are identified in the Book of Reference and the Land Plans submitted with the application for the DCO.
- 2.3 There are six main interfaces between the Proposed Development and the operational railway, which includes both works to existing railway property and new development that interacts with railway property:
- (a) Upgrades to the Saxmundham to Leiston branch line track (**Branch Line**) (Works No. 4C);
 - (b) Upgrades to level crossings on the Branch Line (Works No. 4C);
 - (c) Upgrades to the existing Saxmundham junction (Works No. 4C);
 - (d) Construction of a new 'Green Rail Route' providing a direct link to a railhead at the Sizewell C construction site (Works No. 4A and 4B);
 - (e) Construction of a freight train siding on land east of Eastlands Industrial Estate (Works No. 4D); and
 - (f) Construction of the Sizewell Link Road Bridge (Works No. 12B),
- together the **Proposed Works**.
- 2.4 In order to undertake the Proposed Works the Applicant is seeking:
- (a) temporary possession for the purposes of carrying out the Proposed Development and for maintaining it; and
 - (b) compulsory acquisition of interests and rights in the land.

Additional interactions with the railway following consultation

- 2.5 Following the submission of the Proposed DCO, the Applicant put forward fifteen additional changes to the application (**Proposed Changes**). The Proposed Changes included three change requests that would interact with operational railway:
- (a) Increasing the number of freight train movements on the East Suffolk Line to 7 overnight movements and 1 day time movement (as compared to 5 overnight movements and 1 day time movement in the original Proposed DCO application) and potentially adding a fifth additional train service per day (two additional movements) (**Change Request 1**);¹
 - (b) Increasing the number of freight train movements on the East Suffolk Line to Lowestoft as a result of the change to the Beach Landing Facility design (**Change Request 2**);
 - (c) Extension of the Order limits for works on the Sizewell Link Road (**Change Request 12**),

¹ However, it is now understood that the Applicant will not be progressing the potential to run an additional fifth train service per day.

together the **Change Requests**.

- 2.6 The Change Requests are an extension of the rights sought over Network Rail land as set out in the Proposed DCO and Network Rail is concerned about the impact of the construction and on-going maintenance of these works on the East Suffolk Mainline which would be oversailed by the proposed Sizewell link bridge (Works No. 12B), and the additional mitigation and maintenance required to safely accommodate the proposed Freight Use.
- 2.7 Following the acceptance of the Proposed Changes by the Examining Authority, Network Rail will submit an additional section 56 representation in relation to Change Request 12 by the deadline of 7 June 2021.
- 2.8 The impacts of the Change Requests on operational railway and how these impacts might be mitigated is the subject of further engagement between Network Rail and the Applicant (as detailed in paragraphs 2.9-2.11 below).

Ongoing discussions

- 2.9 The Applicant and Network Rail are in discussions in relation to the Proposed DCO. However, to date, the Applicant has not been able to provide Network Rail with sufficient information about the Proposed Works and the Freight Use for Network Rail to analyse:
 - (a) the impacts of the Proposed Works and Freight Use on the operational railway; and
 - (b) whether or not the Proposed Works are sufficient and deliverable so as to enable the Freight Use.
- 2.10 From the information provided, Network Rail is confident that solutions can be agreed, but has concerns that the infrastructure interventions and the timing for completing the Proposed Works have been underestimated by the Applicant, and that the Applicant has made assumptions with regards to how required infrastructure works impact on operational railway and how these would be co-ordinated. Timescales and logistical issues have also not been made sufficiently transparent by the Applicant and opportunities and/or requirements for upgrading level crossings or closing them have not been considered fully.
- 2.11 Furthermore, Network Rail is unable to support the Freight Use unless a clear programme of mitigation interventions to safeguard the level crossings on the East Suffolk Line is secured. Further work is required to determine the extent of the mitigation interventions required and to secure such mitigation.
- 2.12 Through its initial review, Network Rail have identified potential train paths for the Freight Use and is confident that subject to any necessary mitigation being secured the Freight Use will be possible. However, Network Rail is not in a position to confirm the specific paths which could be used to facilitate the Freight Use without further detail from the Applicant, including the starting location and specific timing of the freight train movements.
- 2.13 The detail on the routing and timing for the Freight Use is critical to allow Network Rail undertake the necessary analysis and complete industry processes to confirm what capacity is available on the East Suffolk Line and the wider network, as well as, what, in addition to the Proposed Works, is necessary to safely accommodate the proposed Freight Use, including any further mitigation measures such as upgrades to other level crossing not yet identified in the Proposed Works.

- 2.14 Analysing whether or not capacity exists on a particular line(s) and the wider network is complex and requires the specific details on the proposed timing and route of the train movements, and details of the type and weight of the proposed trains. Following receipt of all the necessary information it would take a number of months to conduct the analysis into possible paths and any necessary mitigation works required to support the train movements. However, this timeframe is dependent on the detail of the movements required and the scope of the mitigation works which, as explained above, cannot yet be ascertained.
- 2.15 Network Rail understands that the Applicant is unable to provide this specific information at this stage and will not be able to do so within the Examination timeframe. It is also understood that this information may change during the lifetime of the Proposed Development. Therefore, Network Rail will continue to work with the Applicant during the lifetime of the Proposed Development, but Network Rail requires the security of the Protective Provisions in the Order to ensure the safety of the operational railway is maintained. Particularly, as it is not yet possible to identify all the specific impacts on the operational railway at this stage, and it is not going to be possible to do so during the course of the Examination.

How the Applicant can address Network Rail's concerns

- 2.16 Network Rail and the Applicant are in regular discussions to seek to ensure that a private agreement is agreed before the close of the Examination. The Parties have instructed their solicitors and the drafting of a relevant agreement is well progressed. The discussions between the parties relate to the following documents:
- (a) Protective Provisions that provide sufficient protection for Network Rail, its infrastructure and the safe operation of the railway, as referred to below; and
 - (b) A framework agreement that describes how the parties will continue to work together to achieve the delivery of the Proposed Development including provisions for entering into relevant property and related documents in due course including securing the necessary , regulatory consents, clearance conditions and any necessary BAPA/APA for the benefit of Network Rail.
- 2.17 To address Network Rail's concerns the Protective Provisions must be secured in the Order and the related framework agreement entered into, and , for the avoidance of doubt, the Applicant must also continue to provide funding required to (a) analyse the Freight Use and the Proposed Works, (b) to carry out the Proposed Works and (c) to carry out any further mitigation required to facilitate the Freight Use, to ensure that Network Rail and the tax payer are not unduly financially burdened as a result of the Proposed Development taking place.

Network Rail's objection to the DCO

- 2.18 For the reasons set out in this Written Representation Network Rail objects to the Proposed Development.
- 2.19 In relation to the above-mentioned Proposed Works, Network Rail is liaising closely with the Applicant and is willing to enter into private agreements to agree the extent and scope of the rights to be granted to the Applicant and the method of the construction of the Proposed Works (subject to the outcome of Network Rail's internal land clearance process, a process which is imposed on Network Rail by its Network Licence, and the requirements of any regulatory consents).
- 2.20 Without these agreements and the Protective Provisions being in place, Network Rail considers that the Proposed Development, if carried out in relation to the Plots, will have a serious

detrimental impact on the operation of the railway and will prevent Network Rail from operating the railway safely and efficiently and in accordance with its Network Licence. Until such agreements are in place Network Rail is unable to withdraw its objection to the DCO.

3 Conclusions

- 3.1 Network Rail does not object in principle to the Proposed Development.
- 3.2 However, Network Rail strongly objects to the proposed compulsory acquisition of its land and rights over its land in order to construct, operate and maintain the Proposed Works for the reasons given in this Written Representation. Given the potential risk of major accidents during the installation and operation phases of the Proposed Development, Network Rail considers it to be of utmost importance that full protections are first put in place and that the Proposed Development should proceed by way of agreement rather than compulsory acquisition.
- 3.3 Network Rail requests that the Protective Provisions appended to this document be included in the DCO at Part 3 of Schedule 18.
- 3.4 Network Rail considers that the Secretary of State cannot allow the DCO to be granted without amendment, as the test in section 127 of the Planning Act 2008, cannot be satisfied. The granting of compulsory acquisition powers to the Applicant would result in serious detriment to Network Rail's undertaking; would raise significant health and safety concerns for the general public; and Network Rail does not have any other land available to it which could be used to avoid such detriment.
- 3.5 Network Rail is in ongoing discussions with the Applicant regarding the DCO. However, until such time as Network Rail is given the protection and assurances requested as detailed in this Written Representation, Network Rail's objection to the DCO will not be withdrawn.
- 3.6 Should sufficient progress regarding the Protective Provisions and private agreements to be entered into not be made between the parties in the coming weeks, Network Rail will request to be heard at an appropriate hearing to explain in detail the potential impacts of the Proposed Development. Network Rail will of course respond to any Written Questions that the Panel wishes to ask.

Addleshaw Goddard LLP

2 June 2021

Appendix 1

Network Rail Protective Provisions

SCHEDULE 18 Article 44

PROTECTIVE PROVISIONS

PART 3

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15 of this Part of this Schedule any other person on whom rights or obligations are conferred by that paragraph.

2. In this Schedule—

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

"the engineer" means an engineer appointed by Network Rail for the purposes of this Order;

"network licence" means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of their powers under section 8 of the Railways Act 1993;

"Network Rail" means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition "associated company" means any company which is (within the meaning of section 1159 of the Companies Act 2006) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

"plans" includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, 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;

"undertaker" has the same meaning as in article 2 (interpretation) of this Order;

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

"railway property" means any railway belonging to Network Rail Infrastructure Limited and-

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited or connected with any such railway; and

- (b) any easement or other property interest held or used by Network Rail Infrastructure Limited for the purposes of such railway or works, apparatus or equipment; and

"specified work" means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

- 3. (1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (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 authorised development pursuant to this Order.

- 4. (1) The undertaker must not exercise the powers conferred by—

- (a) article 25 (Authority to survey and investigate the land);
- (b) article 26 (Compulsory acquisition of land);
- (c) article 28 (Statutory authority to override easements and other rights);
- (d) article 30 (Compulsory acquisition of rights and imposition of restrictive covenants); -
- (e) article 31 (Private rights of way);
- (f) article 33 (Acquisition of subsoil and airspace only);
- (g) article 37 (Temporary use of land for carrying out authorised development);
- (h) article 39 (Temporary use of land for maintaining authorised development);
- (i) article 40 (Statutory undertakers);
- (j) or the powers conferred by section 11(3) of the 1965 Act,

in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The undertaker must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, or article 40 (Statutory undertakers), in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers of this Order acquire or use or acquire new rights over, or seek to impose any restrictive covenants over, any railway property, or extinguish any existing rights of Network Rail in respect of any third party property, except with the consent of Network Rail.

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

(6) The undertaker shall not place Railway Property in a position where it cannot be used, or maintained, or is placed at risk of not being capable of use, to run trains safely.

5. (1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration in accordance with paragraph 22 of this Part of this Schedule.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated their disapproval of those plans and the grounds of such disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying their approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those

purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works must be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to their reasonable satisfaction.

6. (1) Any specified work and any protective works to be constructed by virtue of paragraph 5(4) must, when commenced, be constructed—
 - (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
 - (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
 - (c) in such manner as to cause as little damage as is possible to railway property; and
 - (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic thereon and the use by passengers of railway property.
- (2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker must, notwithstanding any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.
- (3) Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.
7. The undertaker must-
 - (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
 - (b) supply the engineer with all such information as they may reasonably require with regard to a specified work or the method of constructing it.
8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Part of this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.
9. (1) If any permanent or temporary alterations or additions to railway property are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railway of Network

Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail 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 Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, notwithstanding any such approval of a specified work under paragraph 5(3), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

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

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

(a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) 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 the undertaker and the supervision by the engineer of the construction of a specified work;

(c) in respect of the employment or procurement of the services of any inspectors, signallers, watch-persons and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;

(d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and

(e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11. (1) In this paragraph-

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the operation of the authorised development (including the operation of tramcars using the tramway comprised in the works) where such interference is of a level which adversely affects the safe operation of Network Rail's apparatus; and

“Network Rail's apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail 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 applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail's apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both Parties acting reasonably) appropriate arrangements to verify their effectiveness.

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

(a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail's apparatus which may be at risk of EMI, and thereafter must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;

(b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail's apparatus identified pursuant to sub-paragraph (a); and

(c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail's apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail's apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail's apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) have effect subject to the sub-paragraph.

(6) If at any time and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by Network Rail 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)) to Network Rail's apparatus.

(7) In the event of EMI having occurred –

(a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;

(b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and

(c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus pursuant to sub-paragraphs (5) or (6) –

(a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;

(b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) of this Part of this Schedule applies to the costs and expenses reasonably incurred or losses suffered by network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail'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 82 (Arbitration) to the Centre of Effective Dispute Resolution shall be read as a reference to the Institution of Engineering and Technology.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, the undertaker must, on receipt of such

notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.
14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property 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 alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.
15. (1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 43 (*no double recovery*)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason of the construction or maintenance of a specified work or the failure thereof;

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

(c) by reason of any act or omission of the undertaker or any person in its employ or of its contractors or others whilst accessing to or egressing from the authorised development;

(d) in respect of any damage caused to or additional maintenance required to, railway property or any such interference or obstruction or delay to the operation of the railway as a result of the authorised development or access to or egress from the authorised development by the undertaker or any person in its employ or of its contractors or others;

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision shall not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable written notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) shall if relevant include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs shall, in the event of default, be enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

"the relevant costs" means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any specified work including but not limited to any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

"train operator" means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) 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 this Part of this Schedule (including any claim relating to those relevant costs).
17. In the assessment of any sums payable to Network Rail under this Part of this Schedule there must 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 Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Schedule or increasing the sums so payable.
18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—
 - (a) any railway property shown on the works and land plans and described in the book of reference;
 - (b) any lands, works or other property held in connection with any such railway property; and

(c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part I of the Railways Act 1993.
20. The undertaker must give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 9 (Consent to transfer benefit of Order) of this Order to transfer the benefit of any provision(s) of this Order that affect railway property or a specified work and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—
 - (a) the nature of the application to be made;
 - (b) the extent of the geographical area to which the application relates; and
 - (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.
21. The undertaker must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 80 (Certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in a format specified by Network Rail.
22. In relation to any dispute arising under this part of this Schedule (except for those disputes referred to in paragraph 11(11)) the provisions of article 82 (Arbitration) shall not apply and any such dispute, unless otherwise provided for, must be referred to and settled by a single arbitrator to be agreed between the Parties or, failing agreement, to be appointed on the application of either Party (after giving notice in writing to the other) to the President of the Institution of Civil Engineers.