

## SCHEDULES

### SCHEDULE 15

Section 52.

#### PROTECTIVE PROVISIONS

##### PART I

###### PROTECTION FOR HIGHWAYS AND TRAFFIC

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the nominated undertaker and the highway authority concerned, have effect for the protection of the highway authorities referred to in this Part.
- (2) In this Part of this Schedule—
  - “highway” means a highway for which the local highway authority is the highway authority;
  - “plans” includes sections and specifications; and
  - “property of the highway authority” means any apparatus of the highway authority affixed to or placed under any highway.
- (3) Part III of the New Roads and Street Works Act 1991 shall not apply in relation to any matter which is regulated by this Part of this Schedule.
- 2 Wherever in this Part of this Schedule provision is made with respect to the approval or consent of the highway authority, that approval or consent shall be in writing and subject to such reasonable terms and conditions as the highway authority may require, but shall not be unreasonably withheld.
- 3 (1) The nominated undertaker shall not exercise the powers conferred by paragraph 6(1) of Schedule 3 to this Act without the consent of the highway authority.
- (2) In its application to this paragraph, paragraph 2 above shall have effect with the addition after “require” of “in the interest of public safety or convenience”.
- (3) If within 28 days after a request for consent has been submitted the highway authority has not given or refused such consent, it shall be deemed to have consented to the request as submitted.
- (4) Where consent under this paragraph is given subject to a term or condition the performance of which is, or becomes, inconsistent with the performance by the nominated undertaker of any of the conditions to which the deemed planning permission is subject, the term or condition to which the consent under this paragraph is subject shall not have effect or, as the case may be, shall cease to have effect.
- (5) In sub-paragraph (4) above, the reference to the deemed planning permission is to the planning permission deemed by section 9 above to be granted.
- 4 Before carrying out any work for the construction or maintenance of any part of the works authorised by Part I of this Act which will involve interference with

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a highway, or the traffic in any highway, or before temporarily stopping up any highway, the nominated undertaker shall consult the highway authority—

- (a) as to the time when the work shall be commenced, and as to the extent of the surface of the highway which it may be reasonably necessary for the nominated undertaker to occupy, or the nature of the interference which may be caused to traffic in the carrying out of the work, or as to the time during which, and the extent to which, the highway shall be stopped up (as the case may be), and
- (b) as to the conditions under which the work shall be carried out or the highway shall be stopped up (as the case may be),

so as to reduce so far as reasonably practicable inconvenience to the public and to ensure the safety of the public.

5 The nominated undertaker shall not, without the consent of the highway authority, construct any part of the works authorised by Part I of this Act under and within 8 metres of the surface of any highway which comprises a carriageway except in accordance with plans submitted to, and approved by, the highway authority and if within 28 days after such plans have been submitted the highway authority has not approved or disapproved them, it shall be deemed to have approved the plans as submitted.

6 In the construction of any part of the said works under a highway no part thereof shall, except with the consent of the highway authority, be so constructed as to interfere with the provision of proper means of drainage of the surface of the highway or be nearer than two metres to the surface of the highway.

7 (1) The provisions of this paragraph have effect in relation to, and to the construction of, any new bridge, or any extension or alteration of an existing bridge, carrying any part of the works authorised by Part I of this Act over a highway or carrying a highway over any part of those works; and any such new bridge, or (as the case may be) any bridge so extended or altered, is in this paragraph referred to as “the bridge”.

(2) Before commencing the construction of, or the carrying out of any work in connection with, the bridge which involves interference with a highway, the nominated undertaker shall submit to the highway authority for its approval plans, drawings and particulars (in this paragraph referred to as “plans”) relating thereto, and the bridge shall not be constructed and the works shall not be carried out except in accordance with the plans submitted to, and approved by, the highway authority.

(3) If within 28 days after the plans have been submitted the highway authority has not approved or disapproved them, it shall be deemed to have approved the plans as submitted.

(4) If the bridge carries any part of the works authorised by Part I of this Act over any highway—

- (a) it shall be constructed in such manner as to prevent so far as may be reasonably practicable the dripping of water from the bridge, and
- (b) the highway authority may, at the cost of the nominated undertaker, provide and place such lamps and apparatus as may from time to time be reasonably necessary for efficiently lighting any highway under or in the vicinity of the bridge.

8 The nominated undertaker shall secure that so much of the works authorised by Part I of this Act as is constructed under any highway shall be so designed, constructed and maintained as to carry the appropriate loading recommended

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for highway bridges by the Secretary of State at the time of construction of the works, and the nominated undertaker shall indemnify the highway authority against, and make good to the highway authority, the expenses which the highway authority may reasonably incur in the maintenance or repair of any highway, or any tunnels, sewers, drains or apparatus therein, by reason of non-compliance with the provisions of this paragraph.

- 9 Any officer of the highway authority duly appointed for the purpose may at all reasonable times, on giving to the nominated undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the works authorised by Part I of this Act which—
- (a) is in, over or under any highway, or
  - (b) which may affect any highway or any property of the highway authority,
- during the carrying out of the work, and the nominated undertaker shall give to such officer all reasonable facilities for such inspection and, if he shall be of opinion that the construction of the work is attended with danger to any highway or to any property of the highway authority on or under any highway, the nominated undertaker shall adopt such measures and precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway.
- 10 (1) The nominated undertaker shall not alter, disturb or in any way interfere with any property of the highway authority on or under any highway, or the access thereto, without the consent of the highway authority, and any alteration, diversion, replacement or reconstruction of any such property which may be necessary shall be made by the highway authority or the nominated undertaker as the highway authority thinks fit, and the expense reasonably incurred by the highway authority in so doing shall be repaid to the highway authority by the nominated undertaker.
- (2) If within 28 days after a request for consent has been submitted the highway authority has not given or refused such consent, it shall be deemed to have consented to the request as submitted.
- 11 The nominated undertaker shall not remove any soil or material from any highway except so much as must be excavated in the carrying out of the works authorised by Part I of this Act.
- 12 (1) If the highway authority, after giving to the nominated undertaker not less than 28 days' notice (or, in case of emergency, such notice as is reasonably practicable) of its intention to do so, incurs any additional expense in the signposting of traffic diversions or the taking of other measures in relation thereto, or in the repair of any highway by reason of the diversion thereto of traffic from a road of a higher standard, in consequence of the construction of the works authorised by Part I of this Act, the nominated undertaker shall repay to the highway authority the amount of any such expense reasonably so incurred.
- (2) An amount which apart from this sub-paragraph would be payable to the highway authority by virtue of this paragraph in respect of the repair of any highway shall, if the highway fell or would have fallen due for repair as part of the maintenance programme of the highway authority at any time within ten years of the repair being carried out by the nominated undertaker, so as to confer on the highway authority financial benefit (whether by securing the completion of overdue maintenance work for which the highway authority is liable or by deferment of the time for such work in the ordinary course), be reduced by the amount which represents that benefit.

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- 13 (1) The nominated undertaker shall not, except with the consent of the highway authority, deposit any soil or materials, or stand any plant, on or over any highway so as to obstruct or render less safe the use of the highway by any person, or, except with the like consent, deposit any soil or materials on any highway outside a hoarding, but if within 28 days after request therefor any such consent is neither given nor refused it shall be deemed to have been given.
- (2) The expense reasonably incurred by the highway authority in removing any soil or materials deposited on any highway in contravention of this paragraph shall be repaid to the highway authority by the nominated undertaker.
- 14 The nominated undertaker shall, if reasonably so required by the highway authority, provide and maintain to the reasonable satisfaction of the highway authority, during such time as the nominated undertaker may occupy any part of a highway for the purpose of the construction of any part of the works authorised by Part I of this Act, temporary bridges and temporary ramps for vehicular or pedestrian traffic over any part of the works or in such other position as may be necessary to prevent undue interference with the flow of traffic in the highway.
- 15 (1) Where any part of any highway has been broken up or disturbed by the nominated undertaker and not permanently stopped up or diverted the nominated undertaker shall make good the subsoil, foundations and surface of that part of the highway to the reasonable satisfaction of the highway authority, and shall maintain the same to the reasonable satisfaction of the highway authority for such time as may reasonably be required for the permanent reinstatement of the highway.
- (2) The reinstatement of that part of the highway shall be carried out by the nominated undertaker to the reasonable satisfaction of the highway authority in accordance with such requirements as to specification of material and standards of workmanship as may be prescribed for equivalent reinstatement work by regulations made under section 71 of the New Roads and Street Works Act 1991.
- 16 If any damage to any highway or any property of the highway authority on or under any highway is caused by, or results from, the construction of any work authorised by Part I of this Act or any act or omission of the nominated undertaker, its contractors, agents or employees whilst engaged upon such work, the nominated undertaker may, in the case of damage to a highway, make good such damage to the reasonable satisfaction of the highway authority and, where the nominated undertaker does not make good, or in the case of damage to property of the highway authority, the nominated undertaker shall make compensation to the highway authority.
- 17 The fact that any act or thing may have been done in accordance with plans approved by the highway authority shall not (if it was not attributable to the act, neglect or default of the highway authority or of any person in its employ or its contractors or agents) exonerate the nominated undertaker from any liability, or affect any claim for damages, under this Part of this Schedule or otherwise.
- 18 Any dispute arising between the nominated undertaker and the highway authority under this Part of this Schedule shall, if the parties agree, be referred to arbitration, but shall otherwise be determined by the Secretary of State.

## PART II

### PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the nominated undertaker and the undertakers concerned, have effect.
- (2) In this Part of this Schedule—
- “alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their functions as effectively as is achievable using the apparatus which the alternative apparatus is to replace;
- “apparatus” means—
- (a) in the case of electricity undertakers, electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to, or maintained by, such undertakers;
  - (b) in the case of gas undertakers, mains, pipes or other apparatus belonging to, or maintained by, a public gas transporter for the purposes of gas supply;
  - (c) in the case of water undertakers, mains, pipes or other apparatus belonging to, or maintained by, such undertakers for the purposes of water supply; and
  - (d) in the case of sewerage undertakers, any sewer, drain or works vested in a sewerage undertaker under the Water Industry Act 1991 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;
- (not being, except in paragraph 17 below, apparatus in respect of which the relations between the nominated undertaker and the undertakers are regulated by the provisions of Part III of the New Roads and Street Works Act 1991) and includes any structure for the lodging therein of apparatus or for giving access to apparatus;
- “construction” includes execution, placing, altering, replacing, relaying and removal and, in its application to works which include or comprise any operation, means the carrying out of that operation;
- “functions” includes powers and duties;
- “in” in a context referring to apparatus in land includes under, over, across, along or upon land;
- “plans” includes sections and method statements;
- “service obligations” means any service obligation imposed on the undertakers by or under the enactments authorising them to carry on their respective undertakings; and
- “undertakers” means any of the following, namely, a licence holder within the meaning of Part I of the Electricity Act 1989, a public gas supplier within the meaning of Part I of the Gas Act 1986, a water undertaker within the meaning of the Water Industry Act 1991, a sewerage undertaker within Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act; and, in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained.
- 2 (1) The following provisions of this paragraph have effect in any case where the Secretary of State or the nominated undertaker, in exercise of the powers of Part I of

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this Act, acquires any interest in or temporarily occupies any land in which apparatus is placed.

- (2) Unless a certificate is issued by the appropriate Ministers under sub-paragraph (3) below the apparatus shall not be removed under this Part of this Schedule, and any right of the undertakers to maintain, repair, renew, adjust, alter or inspect the apparatus in that land shall not be extinguished—
    - (a) in the case of a right to adjust or alter apparatus, until 28 days after the nominated undertaker has given the undertakers in whom the right is vested a preliminary notice under paragraph 4 below in respect of land to which the right relates, or, if earlier, the date on which the nominated undertaker commences any work on that land, and
    - (b) in any other case, until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers.
  - (3) Where the appropriate Ministers certify in relation to any apparatus that—
    - (a) failure to remove the apparatus would cause undue delay to the construction of the scheduled works, and
    - (b) the removal of the apparatus before the provision of alternative apparatus in accordance with this paragraph would not substantially prejudice the ability of the undertakers to meet any relevant service obligations,

that apparatus may be removed (or required by the nominated undertaker to be removed) under this Part of this Schedule before any necessary alternative apparatus has been constructed or is in operation to the reasonable satisfaction of the undertakers.
  - (4) In this paragraph “appropriate Ministers” means the Secretary of State for Transport acting jointly with either the Secretary of State for the Environment or the Secretary of State for Trade and Industry.
- 3
- (1) Before exercising any right to adjust or alter apparatus pursuant to paragraph 2(2) above the undertakers concerned shall give the nominated undertaker not less than 28 days' written notice of the proposed alteration or adjustment, together with plans and specifications.
  - (2) Any altered or adjusted apparatus shall be constructed in such line or situation, at such depth and in accordance with such specification as the nominated undertaker may reasonably require for the purpose of securing that (so far as reasonably practicable at the time the requirement is imposed) the apparatus as altered or adjusted will accommodate any work authorised by Part I of this Act.
  - (3) Such apparatus shall be constructed in such manner, and in accordance with such programme, as is agreed between the undertakers and the nominated undertaker with a view to securing, among other things—
    - (a) the efficient implementation of the necessary work,
    - (b) the avoidance of delay or any other adverse effect on the programme for any works to be carried out by the nominated undertaker under Part I of this Act, and
    - (c) the continued fulfilment by the undertakers of their service obligations to a standard no less than that achieved prior to the making of the alteration or adjustment.

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- (4) If under sub-paragraph (2) above the nominated undertaker requires the altered or adjusted apparatus to be constructed in land other than that in which the undertakers have a right to construct it, paragraph 6(2) and (3) below shall apply to the provision of the requisite facilities and rights as if the apparatus were alternative apparatus.
- (5) If any requirement made by the nominated undertaker under sub-paragraph (2) above involves cost in the construction of works under this paragraph exceeding that which would have been involved had the apparatus been altered or adjusted as proposed by the undertakers, and in the absence of the undertakers' proposals the nominated undertaker would have required the removal of the apparatus, the nominated undertaker shall repay to the undertakers the amount of the excess.
- 4       The nominated undertaker shall give the undertakers not less than 28 days' written preliminary notice of the nominated undertaker's intention to give notice under paragraph 6(1)(a) below in respect of apparatus in any land.
- 5       (1) If the undertakers desire to alter or adjust any apparatus which has not been the subject of a notice under paragraph 6(1)(a) below after the extinguishment of their right to do so, they shall (except in the case of works of repair or renewal required in an emergency) submit to the nominated undertaker plans and specifications of the proposed work and such further particulars as the nominated undertaker may reasonably require.
- (2) Any work in respect of which the undertakers are subject to an obligation under sub-paragraph (1) above shall not be constructed except in accordance with such plans as may be approved in writing by the nominated undertaker.
- (3) Any approval of the nominated undertaker required under this paragraph—
- (a) shall be deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, and
- (b) may be given subject to such requirements as the nominated undertaker may make for the purpose of securing that the work does not interfere with the construction or operation of any work authorised by Part I of this Act or for the protection of any such work.
- (4) The requirements which the nominated undertaker may make under sub-paragraph (3) above include requirements as to the construction of protective works and the person by whom the works are to be constructed.
- (5) Any work constructed under this paragraph shall be constructed with all reasonable despatch under the superintendence (if given) and to the reasonable satisfaction of the nominated undertaker.
- 6       (1) This paragraph applies where—
- (a) the nominated undertaker for the purpose of constructing any work authorised by Part I of this Act in, on or under any land, requires the removal of any apparatus placed in that land, and gives the undertakers not less than 28 days' written notice of that requirement, together with a plan of the proposed work, and of the proposed position of the alternative apparatus to be provided or constructed, or
- (b) in consequence of the exercise of any of the powers of Part I of this Act, the undertakers reasonably require to remove any apparatus.
- (2) Subject to sub-paragraph (3) below, the nominated undertaker or the Secretary of State shall afford the undertakers the requisite facilities and rights for the construction

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of any necessary alternative apparatus in other land which is available for the purpose and which is held or used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act or held by the Secretary of State, or in which either of them has sufficient rights or interests and thereafter for the maintenance, repair, renewal and inspection of such apparatus.

- (3) Sub-paragraph (4) below applies where facilities and rights required for the construction of apparatus under sub-paragraph (2) above are to be afforded elsewhere than in such other land and neither the nominated undertaker nor the Secretary of State is able to afford such facilities and rights.
  - (4) The undertakers shall, on receipt of a written notice from the nominated undertaker that this sub-paragraph applies, forthwith use their best endeavours to obtain the necessary facilities and rights; and neither the nominated undertaker nor the Secretary of State shall be under an obligation as to the provision of such facilities and rights in the other land.
  - (5) The obligation imposed by sub-paragraph (4) above shall not extend to the exercise by the undertakers of any power to acquire by way of compulsory purchase order any land or rights in land, other than any power which may be exercisable by them under paragraph 10 of Schedule 4 to this Act.
- 7
- (1) Any alternative apparatus to be constructed by the undertakers in pursuance of paragraph 6 above in land held or used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act or held by the Secretary of State, or in which the undertakers have obtained the necessary facilities and rights, shall be constructed in such manner, and in such line or situation and in accordance with such programme, as is agreed between the undertakers and the nominated undertaker with a view to securing, among other things, the efficient implementation of the necessary work, the avoidance of unnecessary delay and the continued fulfilment by the undertakers of their service obligations to a standard no less than that achieved prior to the removal of the apparatus which the alternative apparatus replaces, or, in default of agreement, determined by arbitration under paragraph 18 below.
  - (2) If the undertakers fail to comply with an agreement made under sub-paragraph (1) above, or with the decision of an arbitrator under paragraph 18 below, they shall be liable to compensate the nominated undertaker in respect of any loss or damage (other than loss of, or arising from delayed receipt of, operating revenue due to delayed opening of the rail link) directly resulting from the failure.
- 8
- The undertakers shall, after the manner of construction and the line and situation of any necessary alternative apparatus have been agreed or determined as aforesaid, and after the grant to or obtaining by the undertakers of any such facilities and rights as are referred to in paragraph 6 above, proceed with all reasonable despatch to construct and bring into operation the alternative apparatus and to remove any apparatus required by the nominated undertaker to be removed under the provisions of this Part of this Schedule and, in default, the nominated undertaker may remove that apparatus.
- 9
- (1) If the nominated undertaker gives notice in writing to the undertakers that it desires to carry out any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as is or will be situate in any lands held or used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act or held by the Secretary of State, such work, instead of being carried out by the undertakers,



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shall be carried out by the nominated undertaker in accordance with plans and specifications and in a position agreed between the undertakers and the nominated undertaker, or, in default of agreement, determined by arbitration under paragraph 18 below, with all reasonable despatch under the superintendence (if given) and to the reasonable satisfaction of the undertakers.

- (2) Nothing in this paragraph shall authorise the nominated undertaker to carry out any connection to or disconnection of any existing apparatus.
- 10
- (1) Where, in accordance with the provisions of this Part of this Schedule, the nominated undertaker or the Secretary of State affords to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection on land held or used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act or held by the Secretary of State of alternative apparatus, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the nominated undertaker or, as the case may be, the Secretary of State, and the undertakers or, in default of agreement, determined by arbitration under paragraph 18 below.
  - (2) In determining such terms and conditions as aforesaid in respect of alternative apparatus to be constructed across or along any works authorised by Part I of this Act the arbitrator shall—
    - (a) give effect to all reasonable requirements of the nominated undertaker for ensuring the safety and efficient operation of those works and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the nominated undertaker or the use of the same, and
    - (b) so far as it may be reasonable and practicable to do so in the circumstances of the case, give effect to the terms and conditions (if any) applicable to the apparatus for which the alternative apparatus is to be substituted and have regard to the undertakers' ability to fulfil their service obligations.
  - (3) If the facilities and rights to be afforded by the nominated undertaker or the Secretary of State 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, more or less favourable on the whole to the undertakers than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbitrator shall make such provision for the payment of compensation to or by the nominated undertaker or the Secretary of State to or by the undertakers in respect thereof as appears to him to be reasonable having regard to all the circumstances of the case.
- 11
- (1) Not less than 28 days before commencing to construct any work authorised by Part I of this Act which is near to, or will or may affect, any apparatus the removal of which has not been required by the nominated undertaker under paragraph 6 above, the nominated undertaker shall submit to the undertakers a plan and description of the work and of any protective measures which the nominated undertaker proposes to take in respect of that apparatus, together with a specification of such measures where appropriate.
  - (2) The work shall be constructed only in accordance with the plan and description submitted as aforesaid and in accordance with such reasonable requirements as may be made by the undertakers for the alteration or otherwise for the protection of the apparatus or for securing access thereto, and the undertakers shall be entitled by their officer to watch and inspect the construction of the work.

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- (3) If the undertakers within 14 days after the submission to them of any such plan and description shall, in consequence of the works proposed by the nominated undertaker, reasonably require the removal of any apparatus and give written notice to the nominated undertaker of that requirement, this Part of this Schedule shall have effect as if the removal of such apparatus had been required by the nominated undertaker under paragraph 6 above.
- (4) Nothing in sub-paragraphs (1) to (3) above shall preclude the nominated undertaker from submitting at any time, or from time to time, but in no case less than 28 days before commencing the construction of the work, a new plan and description thereof in lieu of the plan and description previously submitted, and thereupon the provisions of those sub-paragraphs shall apply to and in respect of the new plan and description.
- (5) The nominated undertaker shall not be required to comply with sub-paragraphs (1) to (3) above in a case of emergency but in such a case it shall give notice to the undertakers as soon as reasonably practicable and a plan and description of those works as soon as reasonably practicable thereafter, and shall comply with those sub-paragraphs so far as reasonably practicable in the circumstances.
- 12 If in consequence of the exercise of the powers of Part I of this Act the access to any apparatus is materially obstructed the nominated undertaker shall, so far as reasonably practicable, provide alternative means of access to such apparatus which is no less convenient than the access enjoyed by the undertakers prior to the obstruction.
- 13 Where, in consequence of Part I of this Act, any part of any highway in which any apparatus is situate ceases to be part of a highway, the undertakers may exercise the same rights of access to such apparatus as they enjoyed immediately before the passing of Part I of this Act, but nothing in this paragraph shall affect any right of the nominated undertaker or of the undertakers to require removal of that apparatus under this Part of this Schedule or the power of the nominated undertaker to construct works in accordance with paragraph 11 above.
- 14 (1) Subject to the following provisions of this paragraph, the nominated undertaker shall repay to the undertakers the reasonable expenses incurred by the undertakers in, or in connection with—
- (a) the removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Part of this Schedule,
  - (b) the cutting off of any apparatus from any other apparatus in consequence of the exercise by the nominated undertaker of any power under Part I of this Act, and
  - (c) any other work or thing rendered reasonably necessary in consequence of the exercise by the nominated undertaker of any such power.
- (2) There shall be deducted from any sum payable under sub-paragraph (1) above the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.
- (3) If in pursuance of the provisions of this Part of this Schedule—
- (a) alternative apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type, or

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- (b) apparatus (whether existing apparatus or alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, 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 the nominated undertaker or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction of works under paragraph 6 above 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 undertakers by virtue of sub-paragraph (1) above shall be reduced by the amount of that excess.
- (4) For the purposes of sub-paragraph (3) above—
- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by 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 shall 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 the undertakers in respect of works by virtue of this paragraph shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7½ years earlier so as to confer on the undertakers any financial benefit by deferment of the time for renewal of the apparatus or of the system of which it forms part in the ordinary course, be reduced by the amount which represents that benefit.
- (6) In any case where work is carried out by the nominated undertaker pursuant to paragraph 9 above and, if such work had been carried out by the undertakers, the repayment made to the undertakers under this paragraph would fall to be reduced pursuant to sub-paragraphs (3) to (5) above, the undertakers shall pay to the nominated undertaker such sum as represents the amount of that reduction.
- 15 (1) Subject to sub-paragraphs (2) and (3) below, if by reason or in consequence of the construction of any of the works authorised by Part I of this Act, or any subsidence resulting from any of those works, 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 the undertakers, or there is any interruption in any service provided, or in the supply of any goods, by any of the undertakers, the nominated undertaker shall bear and pay the cost reasonably incurred by the undertakers in making good such damage or restoring the supply and shall—
- (a) make reasonable compensation to the undertakers for loss sustained by them, and
- (b) indemnify the undertakers against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, the undertakers,
- by reason or in consequence of any such damage or interruption.
- (2) Nothing in sub-paragraph (1) above shall impose any liability on the nominated undertaker with respect to any damage or interruption to the extent that it is

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attributable to the act, neglect or default of the undertakers, their officers, servants, contractors or agents.

- (3) The undertakers shall give the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the nominated undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- 16 The nominated undertaker shall, so far as is reasonably practicable, so exercise its powers under paragraphs 6 and 7 of Schedule 2 to this Act as not to obstruct or render less convenient the access to any apparatus.
- 17 Notwithstanding the temporary stopping up or diversion of any highway under paragraph 6 of Schedule 3 to this Act, the undertakers may do all such works and things in any such highway as may be reasonably necessary to enable them to inspect, repair, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in that highway.
- 18 (1) Any dispute arising between the nominated undertaker and the undertakers under this Part of this Schedule (other than a dispute under paragraph 5(1) to (4) above) shall be determined by an arbitrator who shall be appointed by agreement between the parties or, in default of such agreement, shall be the Secretary of State.
- (2) In determining any such dispute the arbitrator may, if he thinks fit, require the nominated undertaker to construct any temporary or other works so as to avoid, so far as reasonably possible, interference with the use of any apparatus.

### PART III

#### PROTECTION OF LAND DRAINAGE, FLOOD DEFENCE, WATER RESOURCES AND FISHERIES

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the nominated undertaker and the Agency, have effect.
- (2) In this Part of this Schedule—
- “the Agency” means the Environment Agency;
- “construction” includes execution, placing, altering, replacing, relaying and removal;
- “drainage work” means any watercourse and includes any land which is expected to provide flood storage capacity for any watercourse at intervals not less frequent than—
- (a) in the case of land in a rural area, once in 50 years, and
- (b) in the case of land in an urban area, once in 100 years,
- or, if more frequent, the appropriate return period for the watercourse for which capacity is provided, and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;
- “fishery” means any waters containing fish and fish in, or migrating to or from such waters and the spawn, spawning grounds or food of such fish;
- “plans” includes sections, drawings, specifications and method statements;

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“specified work” means so much of any permanent or temporary work authorised by Part I of this Act (which includes, for the avoidance of doubt, any dredging and any geotechnical investigations that may be undertaken) as is likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery; or
- (d) affect the conservation, distribution or use of water resources; and

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer.

- 2 (1) Before beginning to construct any specified work, the nominated undertaker shall submit to the Agency plans of the work and such further particulars available to it as the Agency may within 14 days of the submission of the plans reasonably require.
- (2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 12 below.
- (3) Any approval of the Agency required under this paragraph—
  - (a) shall not be unreasonably withheld;
  - (b) shall be deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval; and
  - (c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or fishery or for the protection of water resources, or for the prevention of flooding or pollution.
- 3 The requirements which the Agency may make under paragraph 2 above include conditions requiring the nominated undertaker at its own expense to construct such protective works (including any new works as well as alterations to existing works) 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, during the construction of the specified work.
- 4 (1) Any specified work, and all protective works required by the Agency under paragraph 2 above, shall be constructed to the reasonable satisfaction of the Agency and the Agency shall be entitled by its officer to watch and inspect the construction of such works.
- (2) The nominated undertaker shall give to the Agency 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 the works comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the nominated undertaker at the nominated undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the nominated undertaker so elects and the Agency in

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writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

- (4) Subject to sub-paragraph (5) below, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) above is served upon the nominated undertaker, it has failed to begin taking steps to comply with the requirements of the notice and thereafter to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the nominated undertaker.
  - (5) In the event of any dispute as to whether sub-paragraph (3) above is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in an emergency exercise the powers conferred by sub-paragraph (4) above until the dispute has been finally determined.
- 5
- (1) Any work constructed under Part I of this Act for the purpose of providing a flood defence shall be maintained to the reasonable satisfaction of the Agency by the person who has control of the work.
  - (2) If any such work is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require that person to repair and restore the work, or any part thereof, or (if the person having control of the work so elects and the Agency in writing consents, such consent not to be unreasonably withheld), to remove the work and restore the site (including any sea defences) to its former condition, to such extent and within such limits as the Agency reasonably requires.
  - (3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any work is served under sub-paragraph (2) above on the person who has control of that work, that person has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from that person.
  - (4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2) above, the Agency shall not except in a case of immediate foreseeable need exercise the powers of sub-paragraph (3) above until the dispute has been finally determined.
- 6
- (1) 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 work is otherwise damaged, so as to require remedial action, such impairment or damage shall be made good by the nominated undertaker to the reasonable satisfaction of the Agency.
  - (2) If such impaired or damaged drainage work for flood defence purposes is not made good to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the nominated undertaker to restore it to its former standard of efficiency or where necessary to construct some other work in substitution therefor.
  - (3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of impaired or damaged drainage work for flood defence purposes is served under sub-paragraph (2) above on the nominated

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undertaker, the nominated undertaker has failed to begin taking steps to comply with the requirements of the notice and has not thereafter made reasonably expeditious progress towards its implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the nominated undertaker.

- (4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2) above, the Agency shall not except in a case of immediate foreseeable need exercise the powers conferred by sub-paragraph (3) above until the dispute has been finally determined.
- 7 (1) The nominated undertaker shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in any fishery during the construction of any specified work.
- (2) If by reason of—
- (a) the construction of any specified work, or
  - (b) the failure of any such work,
- damage to a fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the nominated undertaker requiring it to take such steps as may be reasonably practicable to make good the damage or, as the case may be, to protect the fishery against such damage.
- (3) If, within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the nominated undertaker fails to take such steps as are described in sub-paragraph (2) above, the Agency may take those steps and may recover from the nominated undertaker the expense reasonably incurred by it in doing so.
- (4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to a fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the nominated undertaker the reasonable cost of so doing provided that notice specifying those steps is served on the nominated undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.
- 8 (1) The nominated undertaker shall indemnify the Agency from all claims, demands, proceedings or damages, which may be made or taken against, or recovered from the Agency by reason of—
- (a) any damage to any drainage work so as to impair its efficiency for flood defence purposes,
  - (b) any damage to a fishery,
  - (c) any raising or lowering of the water table in land adjoining the works authorised by this Act or any sewers, drains and watercourses, or
  - (d) any flooding or increased flooding of any such lands,
- which is caused by, or results from, the construction of any specified work or any act or omission of the nominated undertaker, its contractors, agents or employees whilst engaged upon the work.
- (2) The Agency shall give to the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the nominated undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

- 9 Nothing in paragraph 8 above shall require the nominated undertaker to indemnify the Agency in respect of any claim, demand, proceedings or damages which the Agency could reasonably make, take against or recover from any other person.
- 10 The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the nominated undertaker from any liability under the provisions of this Part of this Schedule.
- 11 For the purposes of section 5 of the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879 and Chapter II of Part II of the Water Resources Act 1991 (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this Part of this Schedule with respect to such construction shall be deemed also to constitute an impounding licence under that Chapter or, as the case may be, a consent or approval under those sections, and the nominated undertaker shall not be obliged to serve any notice which would otherwise be required by section 30 of the said Act of 1991 (which relates to the construction of boreholes and similar works in respect of which a licence is not required).
- 12 (1) Any dispute arising between the nominated undertaker and the Agency under this Part of this Schedule shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the appropriate Ministers acting jointly.
- (2) In sub-paragraph (1) above, the reference to the appropriate Ministers—
- (a) in the case of a dispute concerning fisheries, flood defence or land drainage, is to the Secretary of State for the Environment, the Secretary of State for Transport and the Minister of Agriculture, Fisheries and Food, and
- (b) in the case of any other dispute, is to the Secretary of State for the Environment and the Secretary of State for Transport.

## PART IV

### PROTECTION OF TELECOMMUNICATIONS OPERATORS

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the nominated undertaker and telecommunications operator, have effect.
- (2) In this Part of this Schedule—
- “the authorised works” means the works authorised by Part I of this Act;
- “construction” includes installation and “construct” shall be construed accordingly;
- “telecommunications code” means the telecommunications code contained in Schedule 2 to the Telecommunications Act 1984;
- “telecommunications operator” means the operator of a telecommunications code system; and
- “operator”, “telecommunication apparatus”, “telecommunications code system” and “telecommunication system” have the same meanings as in Schedule 4 to the Telecommunications Act 1984.



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- 2 (1) Paragraph 21 of the telecommunications code shall not apply for the purposes of the authorised works to the extent that such works are regulated by Part XI of the Town and Country Planning Act 1990, sections 84 and 85 of the New Roads and Street Works Act 1991 (or regulations made under section 85 of that Act) or sub-paragraphs (3) to (8) of paragraph 4 below.
- (2) Paragraph 23 of the telecommunications code shall apply for the purposes of the authorised works, save—
- (a) insofar as such works are regulated by the New Roads and Street Works Act 1991 or any regulation made under that Act; or
  - (b) where the nominated undertaker exercises a right under subsection (4)(b) of section 272 of the Town and Country Planning Act 1990 or under an order made under that section to remove telecommunications apparatus.
- 3 The temporary stopping up or diversion of any highway under paragraph 6 of Schedule 3 to this Act shall not affect any right of a telecommunications operator under paragraph 9 of the telecommunications code in respect of any apparatus which at the time of the stopping up or diversion is in the highway.
- 4 (1) Where a highway is stopped up under paragraph 1 or 2 of Schedule 3 to this Act, any telecommunications operator whose telecommunications apparatus is under, over, in, on, along or across that highway may exercise the same rights of access in order to inspect, maintain, adjust, repair or alter that apparatus as if this Act had not been passed, but nothing in this sub-paragraph shall affect any right of the nominated undertaker or the telecommunications operator to require removal of that apparatus under this Part of this Schedule or the power of the nominated undertaker to alter apparatus in accordance with paragraph 23 of the telecommunications code.
- (2) The nominated undertaker shall give not less than 28 days' notice in writing of its intention to stop up any highway under paragraph 1 or 2 of Schedule 3 to this Act to any telecommunications operator whose apparatus is under, over, in, on, along or across the highway.
- (3) Where a notice under sub-paragraph (2) above has been given, the telecommunications operator, if it reasonably considers that it is necessary for the safe and efficient operation and maintenance of the apparatus, may, and if reasonably requested so to do by the nominated undertaker in the notice, shall, as soon as reasonably practicable after the service of the notice—
- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the telecommunications operator may reasonably determine and have power to place it, or
  - (b) provide other apparatus in substitution for the existing apparatus and place it in such other position as aforesaid.
- (4) Subject to the following provisions of this paragraph the nominated undertaker shall pay to any telecommunications operator an amount equal to the cost reasonably incurred by the telecommunications operator in or in connection with—
- (a) the execution of relocation works required in consequence of the stopping up of the highway, and
  - (b) the doing of any other work or thing rendered necessary by the execution of relocation works.
- (5) If in the course of the execution of relocation works under sub-paragraph (3) above—

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- (a) apparatus of better type, greater capacity or greater dimensions is placed in substitution for existing apparatus of worse type, smaller capacity or smaller dimensions, except where this has been solely due to using the nearest currently available type, capacity or dimension, or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which 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 the nominated undertaker, or, in default of agreement, is not determined by arbitration to be necessary in consequence of the construction of the authorised works in order to ensure the continued efficient operation of the telecommunications system of the telecommunications operator then, if it involves cost in the execution of the relocation works 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 paragraph would be payable to the telecommunications operator by virtue of sub-paragraph (4) above shall be reduced by the amount of that excess.

- (6) For the purposes of sub-paragraph (5) above—
    - (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus except in a case where the apparatus as so extended provides more than an equivalent service, 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 (in either case of such type, capacity and dimensions as shall reasonably be appropriate) shall be treated as if it also had been agreed or had been so determined.
  - (7) The amount which apart from this sub-paragraph would be payable to a telecommunications operator in respect of works by virtue of sub-paragraph (4) above (and having regard, where relevant, to sub-paragraph (5) above) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7½ years earlier so as to confer on the telecommunications operator 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.
  - (8) Sub-paragraphs (4) to (7) above shall not apply where the authorised works constitute major transport works or major highway works for the purpose of Part III of the New Roads and Street Works Act 1991 (including that provision as applied by paragraph 8 of Schedule 3 to this Act), but instead—
    - (a) the allowable costs of any relocation works shall be determined in accordance with section 85 of that Act (sharing of costs of necessary measures) and any regulations for the time being having effect under that section, and
    - (b) the allowable costs shall be borne by the nominated undertaker and the telecommunications operator in such proportions as may be prescribed by any such regulations.
- 5 (1) Subject to sub-paragraphs (2) to (4) below, if by reason or in consequence of the construction of the authorised works or any subsidence resulting from any of those works, any damage is caused to any telecommunications apparatus, other than

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apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or property of the telecommunications operator, or there is any interruption in the supply of the service provided by the telecommunications operator, the nominated undertaker shall bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and shall—

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

(2) Sub-paragraph (1) above shall not apply to any apparatus in respect of which the relations between the nominated undertaker and the telecommunications operator are regulated by the provisions of Part III of the New Roads and Street Works Act 1991 or to any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

(3) Nothing in sub-paragraph (1) above shall impose any liability on the nominated undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the telecommunications operator, its officers, servants, contractors or agents.

(4) The telecommunications operator shall give the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the nominated undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

6 Any dispute arising under this Part of this Schedule shall be determined by an arbitrator who shall be appointed by agreement between the parties or, in default of such agreement, shall be the Secretary of State.

## PART V

### PROTECTION OF PORT OF SHEERNESS LIMITED

1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the nominated undertaker and the port authority, have effect for the protection of the port authority.

(2) In this Part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying and removal;

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

“the port authority” means the Port of Sheerness Limited;

“the river” means the River Medway;

“operations” includes temporary works, dredging works and temporary mooring of vessels authorised by paragraph 11 of Schedule 2 to this Act;

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“tidal work” means so much of any work authorised by Part I of this Act as is on or over the surface of land below the level of mean high water springs forming part of the river.

- 2 (1) Before beginning any operations for the construction of any tidal work, the nominated undertaker shall submit to the port authority plans of the work and such further particulars available to it as the port authority may within 14 days of the submission of the plans reasonably require.
- (2) Such further particulars may include such relevant hydraulic and geological information as may be available to the nominated undertaker and is not in the possession of the port authority.
- (3) A tidal work shall not be constructed except in accordance with such plans as may be approved by the port authority or determined under paragraph 14 below.
- (4) Any approval of the port authority required under this paragraph shall not be unreasonably withheld and—
- (a) shall be deemed to have been given if it is neither given nor refused (with an indication of the grounds for that refusal) within 28 days of the submission of the plans for approval; and
  - (b) may be given subject to such reasonable requirements as the port authority may make for the protection of traffic in, or the flow or regime of, the river.
- 3 The nominated undertaker shall carry out all operations for the construction of any tidal works with all reasonable despatch to the reasonable satisfaction of the port authority (and shall promptly remove all temporary works as soon as the same are no longer required) so that river traffic shall not suffer more interference than is reasonably practicable and the port authority shall be entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect such operations.
- 4 (1) The nominated undertaker shall not, without the consent of the port authority, deposit in, or allow to fall or be washed into, the river any gravel, soil or other material.
- (2) Any consent of the port authority under this paragraph shall not be unreasonably withheld and—
- (a) shall be deemed to have been given if it is neither given nor refused within 28 days of the submission of the request therefor; and
  - (b) may be given subject to such reasonable requirements as the port authority may make for the protection of navigation in, or the flow or regime of, the river.
- (3) In its application to the discharge of water into the river, paragraph 9(5) of Schedule 2 to this Act shall have effect subject to the terms of any conditions attached to a consent given under this paragraph.
- (4) Nothing in this paragraph authorises the doing of anything prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991 (offences of polluting controlled waters).
- 5 If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any tidal work (other than a pile, stump or other obstruction on the site of any permanent work), the nominated undertaker shall, as soon as reasonably practicable after the receipt of notice in writing from the port authority requiring such action, remove it from the river or, if it is not reasonably practicable to remove

it, cut it off at such level below the bed of the river (not being more than two metres below bed level in the main navigation channel or one metre below bed level elsewhere in the river) as the port authority may reasonably direct and in the absence of such action within a reasonable period of time the port authority may carry out the removal and recover its reasonable expenses in so doing from the nominated undertaker.

- 6 (1) If—
- (a) by reason of the construction of any tidal work, it is necessary for the port authority to incur costs in altering, removing, resiting or reinstating relevant existing moorings, or laying down and removing relevant substituted moorings, or carrying out dredging operations for any such purpose not being costs which it would have incurred for any other reason; and
  - (b) the port authority gives to the nominated undertaker not less than 28 days' notice of its intention to incur such costs, and takes into account any representations which the nominated undertaker may make in response to the notice within 14 days of the receipt of the notice;
- the nominated undertaker shall pay the costs reasonably so incurred by the port authority.
- (2) For the purpose of this paragraph “relevant moorings” are moorings which are owned by the port authority, or moorings which are licensed by the port authority and in respect of which it is under an obligation to provide substitute moorings.
- 7 The nominated undertaker shall, at or near every tidal work, exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the port authority may from time to time reasonably require.
- 8 (1) If any tidal work is abandoned or falls into decay, the port authority may by notice in writing to the nominated undertaker require it, either to repair and restore the work or any part of it, or (if the nominated undertaker no longer requires the work) to remove the work and restore the site to its former condition to such extent as the port authority reasonably requires.
- (2) If—
- (a) a work which consists of a tidal work and non-tidal work is abandoned or falls into decay; and
  - (b) the non-tidal work is in such a condition as to interfere with the right of navigation in the river,
- the port authority may include the non-tidal work, or any part of it, in any notice under this paragraph.
- (3) In sub-paragraph (2) above, references to a non-tidal work are to so much of any work authorised by Part I of this Act as is on or over land above the level of mean high water springs.
- (4) If after such reasonable period as may be specified in a notice under this paragraph the work specified in the notice has not been carried out, the port authority may carry out that work and the nominated undertaker shall pay the amount of any expenditure reasonably incurred by the port authority in so carrying it out.
- 9 (1) Without prejudice to the provisions of paragraph 7 above, the nominated undertaker shall provide, or afford reasonable facilities for the port authority to provide and maintain, at the viaduct over the river comprised in Work No. 13, such navigational lights or other apparatus for the benefit of navigation as the port authority may

reasonably consider necessary by reason of construction of the viaduct or the carrying out of operations for its construction.

- (2) The nominated undertaker shall pay to the port authority the costs reasonably incurred by it in connection with the provision and maintenance of that apparatus.
- 10 On the completion of the construction of the viaduct over the river comprised in Work No. 13 the nominated undertaker shall supply to the port authority a plan and sections and cross-sections on an appropriate scale showing the situation and level of the viaduct over the river.
- 11 The nominated undertaker shall not, except for the purpose of constructing a tidal work or any connected works, remove any gravel, soil or other materials from the bed, shores or banks of the river without the previous consent of the port authority signified in writing under the hand of its secretary (such consent not to be unreasonably withheld), but nothing in this paragraph shall prevent the use by the nominated undertaker of any gravel, soil or other material so removed for the purposes of the construction of other tidal works or any connected works.
- 12 (1) The nominated undertaker shall indemnify the port authority from all claims, demands, proceedings or damages which may be made or given against or recovered from the port authority by reason of any damage to the river or its banks or any works or apparatus of the port authority in the river which is caused by or results from the construction of any tidal work or any act or omission of the nominated undertaker, its contractors, agents or employees whilst engaged upon the work, and from any costs reasonably incurred by the port authority in making good such damage.
- (2) The port authority shall give to the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the nominated undertaker which, if it notifies the port authority that it desires to do so, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- (3) Nothing in sub-paragraph (1) above shall impose any liability on the nominated undertaker in respect of silting or scouring.
- 13 Nothing in paragraph 12 above shall impose any liability on the nominated undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the port authority, its officers, servants, contractors or agents, but the fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the port authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not (in the absence of negligence on the part of the port authority, its officers, servants, contractors or agents) relieve the nominated undertaker from any liability under the provisions of this Part of this Schedule.
- 14 Any dispute arising between the nominated undertaker and the port authority under this Part of this Schedule shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the Secretary of State.

## PART VI

### PROTECTION OF BRITISH WATERWAYS BOARD

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the nominated undertaker and the Board, have effect.

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- (2) In this Part of this Schedule—
- “the Board” means the British Waterways Board;
  - “the canal” means the Regent’s Canal (including the St. Pancras Yacht Basin), the River Lee Navigation or the Waterworks River as the case may be, insofar as any of those waterways is owned or managed by the Board, and includes any works connected therewith for the maintenance of which the Board is responsible and any lands held or used by the Board for the purposes of the canal;
  - “construction” includes execution, placing, altering, replacing and relaying and includes removal;
  - “plans” includes sections, drawings, specifications and method statements;
  - “specified work” means so much of any permanent or temporary work authorised by Part I of this Act as is in, across, under, over or in the vicinity of the canal.
- 2 The Secretary of State shall not under the powers of section 4 above acquire compulsorily any land of the Board or any easement or other right over such land in the London Boroughs of Camden, Islington, Hackney or Newham other than such land, or easements or other rights thereover, as is reasonably necessary for, or in connection with, the construction, maintenance or operation of works authorised by Part I of this Act.
- 3 (1) Before beginning to construct any specified work, the nominated undertaker shall submit to the Board plans of the work and such further particulars available to it as the Board may within 14 days of the submission of the plans reasonably require.
- (2) Any specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Board or determined under paragraph 11 below.
- (3) Any approval of the Board required under this paragraph shall not be unreasonably withheld and—
- (a) shall be deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval; and
  - (b) may be given subject to such reasonable requirements as the Board may make for the purpose of ensuring the safety or stability of the canal, including requirements as to the construction of protective works.
- 4 (1) Any specified work, and any protective works required by the Board under paragraph 3(3)(b) above, shall be constructed with all reasonable despatch to the reasonable satisfaction of the Board, and in such manner as to cause as little damage to the canal as may be reasonably practicable and as little interference as may be reasonably practicable with the passage of vessels using the canal, and the Board shall be entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect the construction of such work or works.
- (2) The nominated undertaker shall give to the Board not less than 28 days' notice in writing of its intention to commence construction of any specified work or any protective works and also, except in emergency (when the nominated undertaker shall give such notice as may be reasonably practicable), of its intention to carry out any works for the repair or maintenance of any specified work insofar as such works of repair or maintenance affect or interfere with the canal.

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- 5 In constructing the bridge, or bridges, forming parts of Works Nos. 1AA, 1BB, 1CC, 1DD, 1EE, 3B and 3C over the canal, the nominated undertaker shall ensure that the soffit of any bridge at its lowest point is at a level of not less than 26.28 metres above Ordnance Datum Newlyn.
- 6 (1) The nominated undertaker shall not deposit any polluting material on, in or over the canal and shall not without the consent of the Board—
- (a) deposit any other materials on, in or over the canal; or
  - (b) notwithstanding anything in paragraph 9 of Schedule 2 to this Act (which authorises the discharge of water in connection with the construction or maintenance of works authorised under Part I of this Act), discharge any water directly or indirectly into the canal.
- (2) Any consent of the Board required under this paragraph shall not be unreasonably withheld and—
- (a) shall be deemed to have been given if it is neither given nor refused within 28 days of the submission of the request therefor; and
  - (b) may be given subject to such reasonable requirements as the Board may make—
    - (i) in the case of a deposit, so as to ensure that the use of the canal is not obstructed or rendered less safe, and
    - (ii) in the case of a discharge, concerning the reimbursement by the nominated undertaker of expenses incurred by the Board in disposing of the water so discharged, being expenses which the Board would not have incurred but for the discharge.
- 7 In its application to the discharge of water into the canal, paragraph 9(5) of Schedule 2 to this Act shall have effect subject to the terms of any conditions attached to the consent under paragraph 6(2) above and, where such discharge includes a deposit to which consent has been given under paragraph 6(1) above, to any conditions attached to that consent.
- 8 (1) If as a result of the construction of any specified work any part of the towing path beside the canal, or any public right of way giving access thereto, is temporarily closed to pedestrians or cyclists and there is no way which provides a reasonable alternative, the nominated undertaker shall, so far as reasonably practicable and to the extent that it is consistent with safety, provide a substitute path or paths for such time as the closure continues.
- (2) This paragraph is without prejudice to the requirements of paragraph 6(2) of Schedule 3 to this Act and of paragraph 3(1) of Part I of this Schedule.
- 9 (1) The nominated undertaker shall indemnify the Board from all claims, demands, proceedings or damages, which may be made or given against, or recovered from the Board by reason of any damage to the canal which is caused by, or results from, the construction of any specified work or protective work or any act or omission of the nominated undertaker, its contractors, agents or employees whilst engaged upon the work and from any costs reasonably incurred in making good such damage.
- (2) The Board shall give to the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the nominated undertaker which, if it notifies the Board that it desires to do so, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.



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- 10 Nothing in paragraph 9 above shall impose any liability on the nominated undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of the Board, its officers, servants, contractors or agents but the fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Board, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not (in the absence of negligence on the part of the Board, its officers, servants, contractors or agents) relieve the nominated undertaker from any liability under the provisions of this Part of this Schedule.
- 11 (1) Any dispute arising between the nominated undertaker and the Board under this Part of this Schedule shall, if the parties agree, be determined by arbitration, but shall otherwise be determined by the appropriate Ministers acting jointly.
- (2) In sub-paragraph (1) above, the reference to the appropriate Ministers—
- (a) in the case of a dispute concerning land drainage or flood defence, is to the Secretary of State for the Environment, the Secretary of State for Transport and the Minister of Agriculture, Fisheries and Food, and
  - (b) in the case of any other dispute, is to the Secretary of State for the Environment and the Secretary of State for Transport.

## PART VII

### PROTECTION OF PORT OF LONDON AUTHORITY

- 1 (1) The provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the nominated undertaker and the Port Authority, have effect for the protection of the Port Authority and the users of the river.
- (2) In this Part of this Schedule—
- “construction” includes execution, placing, altering, replacing, relaying and removal and, in its application to works which include or comprise any operation, means the carrying out of that operation;
  - “operations” includes temporary works, dredging and mooring of vessels authorised by paragraph 11 of Schedule 2 to this Act;
  - “plans” includes sections, drawings, specifications and method statements;
  - “the Port Authority” means the Port of London Authority;
  - “the river” means the waters within the limits of the port of London as described in Schedule 1 to the Port of London Act 1968;
  - “specified work” means so much of any permanent or temporary work authorised by Part I of this Act (which includes, for the avoidance of doubt, any removal of gravel or other material, any dredging or similar work and any geotechnical investigations that may be undertaken) as is on, in, under or over—
    - (a) the surface of land below the level of mean high water springs forming part of the river; or
    - (b) any land owned, occupied or used by the Port Authority for operational purposes.
- 2 (1) Before beginning any operations for the construction of any specified work, the nominated undertaker shall submit to the Port Authority plans of the work and such

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further particulars available to it as the Port Authority may within 14 days of the submission of the plans reasonably require.

- (2) A specified work shall not be constructed except in accordance with such plans as may be approved by the Port Authority or determined under paragraph 10 below.
  - (3) Any approval of the Port Authority required under this paragraph shall not be unreasonably withheld and—
    - (a) shall be deemed to be given if it is neither given nor refused (with an indication of the grounds for refusal) within 28 days of the submission of the plans; and
    - (b) may be given subject to such reasonable requirements as the Port Authority may make for the protection of—
      - (i) traffic in, or the flow or regime of, the river; or
      - (ii) the use of its operational land for the purposes of performing its statutory functions.
  - (4) The requirement for approval under this paragraph does not constitute any specified work a work subject to any of the controls in Part V of the Port of London Act 1968.
- 3 The nominated undertaker shall carry out all operations for the construction of any specified work with all reasonable despatch to the reasonable satisfaction of the Port Authority so that river traffic and the exercise of the Port Authority's statutory functions shall not suffer more interference than is reasonably practicable and the Port Authority shall be entitled by its officer at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect such operations other than any operation relating to Work No. 10.
- 4 (1) The nominated undertaker shall not, without the consent of the Port Authority, deposit in, or allow to fall or be washed into, the river any gravel, soil or other material.
- (2) Any consent of the Port Authority under this paragraph shall not be unreasonably withheld and—
    - (a) shall be deemed to have been given if it is neither given nor refused within 28 days of the submission of the request therefor; and
    - (b) may be given subject to such reasonable requirements as the Port Authority may make for the protection of navigation in, or the flow or regime of, the river.
  - (3) In its application to the discharge of water into the river, paragraph 9(5) of Schedule 2 to this Act shall have effect subject to the terms of any conditions attached to a consent given under this paragraph.
  - (4) Nothing in this paragraph authorises the doing of anything prohibited by section 85(1), (2) or (3) of the Water Resources Act 1991 (offences of polluting controlled waters).
  - (5) The requirement for consent under this paragraph does not constitute any specified work or any operation a work or operation subject to any of the controls in Part V of the Port of London Act 1968.
- 5 If any pile, stump or other obstruction to navigation becomes exposed in the course of constructing any specified work (other than a pile, stump or other obstruction on the site of any permanent work), the nominated undertaker shall, as soon as reasonably practicable after the receipt of notice in writing from the Port Authority

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requiring such action, remove it from the river or, if it is not reasonably practicable to remove it, cut it off at such level below the bed of the river (not being more than two metres below the bed of the river) as the Port Authority may reasonably direct.

- 6 If—
- (a) by reason of the construction of any specified work it is reasonably necessary for the Port Authority to incur costs in altering, removing, resiting or reinstating existing moorings owned by the Port Authority, or laying down and removing substituted moorings, or carrying out dredging operations for any such purpose, not being costs which it would have incurred for any other reason; and
  - (b) the Port Authority gives to the nominated undertaker not less than 28 days' notice of its intention to incur such costs, and take into account any representations which the nominated undertaker may make in response to the notice within 14 days of the receipt of the notice;
- the nominated undertaker shall pay the costs reasonably so incurred by the Port Authority.
- 7 The nominated undertaker shall, at or near every specified work, and any other work of which the nominated undertaker is in possession in exercise of any of the powers of Part I of this Act, being in either case a work which is below the level of mean high water springs, exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the Port Authority may from time to time reasonably require.
- 8 (1) If any specified work or any other work of which the nominated undertaker is in possession in exercise of any of the powers of Part I of this Act, being in either case a work which is below the level of mean high water springs is abandoned, the Port Authority may by notice in writing require the nominated undertaker to take such reasonable steps as may be specified in the notice to remove the work and (to such extent as the Port Authority reasonably requires) to restore the site to its former condition.
- (2) If any specified work which is below the level of mean high water springs is in such condition that it is, or is likely to become, a danger to or to interfere with navigation in the river, the Port Authority may by notice in writing require the nominated undertaker to take such reasonable steps as may be specified in the notice—
- (a) to repair and restore the work or part of it, or
  - (b) if the nominated undertaker so elects, to remove the work and (to such extent as the Port Authority reasonably requires) to restore the site to its former condition.
- (3) If—
- (a) a specified work which consists of a tidal work and a non-tidal work is abandoned or falls into decay; and
  - (b) the non-tidal work is in such a condition as to interfere with the right of navigation in the river;
- the Port Authority may include the non-tidal work, or any part of it, in any notice under this paragraph.
- (4) In sub-paragraph (3) above “tidal work” means so much of any specified work as is below the level of mean high water springs and “non-tidal work” means so much of any such work as is above that level.

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- (5) If after such reasonable period as may be specified in a notice under this paragraph the nominated undertaker has failed to begin taking steps to comply with the requirements of the notice or after beginning has failed to make reasonably expeditious progress towards their implementation, the Port Authority may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the nominated undertaker.
- 9 Paragraph 9(4) of Schedule 2 to this Act shall apply to any discharge of water under paragraph 9(1) of that Schedule in connection with the construction or maintenance of a specified work notwithstanding that the part of the river affected by the discharge is not a main river.
- 10 Any dispute arising between the nominated undertaker and the Port Authority under this Part of this Schedule shall, if the parties agree, be determined by arbitration but shall otherwise be determined by the Secretary of State.