SCHEDULES

SCHEDULE 8

Article 36

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR NETWORK RAIL

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

2. In this Part of this Schedule—

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

"Control Period" means the period during which Network Rail is required to implement the financial framework determined by the ORR at an access charges review in relation to the maintenance, renewal and enhancement of Network Rail's infrastructure;

"Control Period 6" means the Control Period planned to commence on 1 April 2019 and conclude on 31 March 2024, or such other dates as may be advised by the ORR from time to time;

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

"the funding period" means Control Period 6 or, if later, the period ending two years after the railway forming part of the scheduled works is first opened for public use;

"network licence" means the network licence, as amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 (licences) of the Railways Act 1993(**1**);

"Network Rail" includes 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 (meaning of "subsidiary" etc.) of the Companies Act 2006)(**2**) 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;

"Network Rail Infrastructure Limited" means Network Rail Infrastructure Limited, a company limited by shares and incorporated under the Companies Act 1985, whose registered number is 02904587 and registered office is 1 Eversholt Street, London, NW1 2DN;"Network Rail third party agreement" means any agreement between Network Rail and any other party (a "third party") concerning railway property or any asset held by a third party which is used in conjunction with railway property;

"ORR" means the Office of Rail and Road;

(**1**) 1993 c. 43.
(**2**) 2006 c. 46.

"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;

"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 and—

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

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

"specified work" means so much of any of the authorised works 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 must not be unreasonably withheld or delayed but may be subject to reasonable conditions and 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 TfL with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements arising from those procedures; and

(b) use its reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised works under this Order.

4.—(1) TfL must not exercise the powers conferred by article 16 (protective works to buildings) or article 18 (power to survey and investigate land, etc.) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act or the Compulsory Purchase (Vesting Declarations) Act 1981(**3**) as applied by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) TfL 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) TfL must not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 7 (provisions relating to statutory undertakers, etc.), 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) TfL must not under the powers conferred by this Order acquire or use, or acquire new rights over or seek to impose any restrictions on the use of, any railway property except with the consent of Network Rail.

5.—(1) TfL 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 under article 45 (arbitration).

(**3**) 1981 c. 66.

(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 disapproval of those plans and the grounds of disapproval TfL may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from TfL.

(3) If, following service of notice under sub-paragraph (2), the engineer has not by the expiry of the further 28 day period intimated his approval or disapproval, he is deemed to have approved the plans as submitted.

(4) If by the end of the period of 28 days beginning with the date on which written notice was served on the engineer under sub-paragraph (2), Network Rail gives notice to TfL 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 TfL desires such part of the specified work to be constructed, Network Rail must construct it with all reasonable despatch on behalf of and to the reasonable satisfaction of TfL 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 TfL.

(5) When signifying 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 the safe and efficient operation of the railways of Network Rail or the services of operators using those railways (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 are to be constructed by Network Rail, or by TfL, if Network Rail so desires, and such protective works must be carried out at the expense of TfL in either case with all reasonable despatch and TfL must not commence the construction of the specified works until the engineer has notified TfL that the protective works have been completed to the engineer's reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed under paragraph 5(5) 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 on it or the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, TfL must, regardless of any approval, make good such damage and pay to Network Rail all reasonable expenses which Network Rail may incur 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—

(a) any liability on TfL with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or

(b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of TfL or its servants, contractors or agents.

7. TfL 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 the engineer 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 TfL 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 TfL 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, or to any protective works under paragraph 5(5), are reasonably necessary by reason or in consequence of the construction of a specified work or during a period of 12 months after the opening for public use of any authorised work that includes a specified work, in consequence of that specified work for public use in order to ensure the safety of railway property or the 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 TfL reasonable notice of its intention to carry out such alterations and additions (which must be specified in the notice), TfL 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 TfL, Network Rail gives notice to TfL 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 TfL desires that part of the specified work to be constructed, Network Rail must assume construction of that part of the specified work and TfL must, regardless of any such approval of a specified work under paragraph 5(1), 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 or in consequence 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 TfL 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 TfL to Network Rail under this paragraph.

(5) TfL will use reasonable endeavours not (whether by itself, its contractors or agents) to exercise any of the powers of this Order, or to do or omit to do any other thing, that would or might cause Network Rail to be in breach of any Network Rail third party agreement of which a copy has been provided to TfL in writing.

10. TfL 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 TfL as provided by paragraph 5(4) or in constructing any protective works under the provisions of paragraph 5(5) 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 TfL 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, signalmen, watchmen and other persons whom it is 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 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 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's apparatus generated by the operation of the authorised 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 works) 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 works giving rise to EMI (unless TfL 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), TfL must in the design and construction of the authorised works 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 TfL's compliance with sub-paragraph (3)—

(a) TfL 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 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 TfL all information in the possession of Network Rail reasonably requested by TfL in respect of Network Rail's apparatus identified under paragraph (a); and

(c) Network Rail must allow TfL reasonable facilities for the inspection of Network Rail's apparatus identified under 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) has effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of operation of any part of the authorised works regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the

authorised works causes EMI then TfL 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) immediately cease to use (or procure the cessation of use of) TfL'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) TfL must afford reasonable facilities to Network Rail for access to TfL's apparatus in the investigation of such EMI;

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

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

(8) Where Network Rail approves modifications to Network Rail's apparatus under sub-paragraph (5) or (6)—

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

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

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) 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 are deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 45 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Electrical Engineers.

12. TfL 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 belonging to Network Rail.

13. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to TfL 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, TfL 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.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the date when this Order was made by reason of the existence of a specified work (excluding any expenses incurred after the end of Control Period 6 in respect of a specified work vested in Network Rail), provided that 56 days' previous

notice of the commencement of such alteration, reconstruction or maintenance has been given to TfL, are to be repaid by TfL to Network Rail.

15.—(1) TfL must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (but subject to article 44 (no double recovery)) which may be occasioned to or reasonably incurred by Network Rail—

(a) by reason or in consequence of the construction or maintenance of a specified work or the failure of such a work (excluding any costs, charges, damages and expenses incurred after the end of Control Period 6 in respect of a specified work vested in Network Rail); or

(b) by reason or in consequence of any act or omission of TfL or of any person in its employment or of its contractors or others whilst engaged upon a specified work,

including (for the avoidance of doubt) any costs, charges, damages and expenses that are attributable to a breach by Network Rail of a Network Rail third party agreement when such breach is caused by or consequential on the exercise of the powers of this Order.

(2) In addition to the indemnity in sub-paragraph (1), TfL must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work (excluding any claims and demands arising after the end of Control Period 6 in respect of a specified work vested in Network Rail) 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 TfL or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will 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 TfL from any liability under the provisions of this sub-paragraph.

(3) Network Rail must give TfL reasonable notice of any such claim or demand and must make no settlement or compromise of such a claim or demand without the prior consent of TfL.

(4) The sums payable by TfL under sub-paragraph (1) or (2) may include a sum equivalent to the relevant costs.

(5) 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 such sums which Network Rail receives under sub-paragraph (4) which relates to the relevant costs of that train operator.

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

(7) 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 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 sub-paragraph (1) or (2); and

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

16. Network Rail must, on receipt of a request from TfL, from time to time provide TfL free of charge with written estimates of the costs, charges, expenses and other liabilities for which TfL 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 TfL to assess the reasonableness of any such estimate or claim made or to be made under 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 TfL under this Part of this Schedule or increasing the sums so payable.

18. TfL 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 42 (certification of plans, etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

19. TfL 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 TfL of—

(a) any railway property shown on the deposited 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.

20. Nothing in this Order, or in any enactment incorporated with or applied by this Order, is to prejudice or affect the operation of Part I of the Railways Act 1993.

21.—(1) If TfL proposes to exercise any of the powers of article 38 (powers of disposal, agreements for operation etc.), it shall not later than 28 days before any such application is made give written notice to Network Rail and any such notice 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 made.

(2) If TfL proposes to enter into any agreements with respect to any of the matters set out under article 38(2), it shall not later than 28 days before any such agreement is entered into give written notice to Network Rail and any such notice must describe or give (as appropriate)—

(a) the nature of the agreement;

(b) the extent of the geographical area to which the agreement relates; and

(c) the name and address of any other person who it is intended would be a party to the agreement.

(3) TfL and the Secretary of State must have due regard to any representations made by Network Rail in response to any notice received under sub-paragraphs (1) and (2).

PART 2

PROTECTION FOR THE ENVIRONMENT AGENCY

22.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between TfL and the Agency.

(2) In this Part of this Schedule—

"the Agency" means the Environment Agency;

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

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

"environmental duties" means the Agency's duties in the Environment Act 1995(**4**), the Natural Environment and Rural Communities Act 2006(**5**) and the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003(**6**);

"the fishery" means any waters containing fish and the spawn, habitat or food of such fish;

"plans" includes sections, drawings, specifications and method statements;

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

(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 drains.

23.—(1) Before beginning to construct any specified work, TfL must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 33.

(3) Any approval of the Agency required under this paragraph—

(a) must not be unreasonably withheld;

(b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

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

24. Without limitation on the scope of paragraph 23, the requirements which the Agency may make under that paragraph include conditions requiring TfL at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

(a) to safeguard any drainage work against damage; or

(b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

(**4**) 1995 c. 25.
(**5**) 2006 c. 16
(**6**) S.I. 2003/3242.

by reason of any specified work.

25.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 24, must be constructed—

(a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and

(b) to the reasonable satisfaction of the Agency,

and an officer of the Agency is entitled to watch and inspect the construction of such works.

(2) TfL must 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 a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require TfL at TfL's own expense to comply with the requirements of this Part of this Schedule or (if TfL so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) 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) and paragraph 29, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon TfL, it has failed to begin taking steps to comply with the requirements of the notice and subsequently 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 is recoverable from TfL.

(5) In the event of any dispute as to whether sub-paragraph (3) 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 must not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

26.—(1) Subject to sub-paragraph (5) TfL must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and of land to be acquired or used or on land held by TfL for the purposes of, or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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

(3) Subject to paragraph 29, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on TfL, TfL has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently 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 TfL.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

(a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not prevented by the powers conferred by the Order from doing so; and

(b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

27. Subject to paragraph 29, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by TfL to the reasonable satisfaction of the Agency and if TfL fails to do so, the Agency may make good the impairment or damage and recover from TfL the expense reasonably incurred by it in doing so.

28.—(1) TfL must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the 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 the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on TfL 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) Subject to paragraph 29, 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, TfL fails to take such steps as are notified under sub-paragraph (2), the Agency may take those steps and may recover from TfL the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 29, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from TfL the reasonable cost of so doing provided that notice specifying those steps is served on TfL as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

29. Nothing in paragraphs 25(4), 26(3), 27, 28(3) and 28(4) authorises the Agency to execute works on or affecting a railway forming part of the authorised works without the prior consent in writing of TfL such consent not to be unreasonably withheld or delayed.

30. TfL must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

(a) in the examination or approval of plans under this Part of this Schedule; and

(b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule.

31.—(1) Without affecting the other provisions of this Part of this Schedule, TfL must indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss, which may be made or taken against, recovered from, or incurred by, the Agency by reason of—

(a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;

(b) any damage to the fishery;

(c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses;

(d) any flooding or increased flooding of any such lands; or

(e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of TfL, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency must give to TfL reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of TfL, but such agreement must not be unreasonably withheld or delayed.

32. The fact that any work or thing has been executed or done by TfL 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, does not relieve TfL from any liability under the provisions of this Part of this Schedule.

33. Any dispute arising between TfL and the Agency under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 45 (arbitration), but otherwise is to be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by TfL or the Agency, after notice in writing by one to the other.

PART 3

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Interpretation

34.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between TfL and the specified undertaker concerned.

(2) The provisions of Schedule 7 (provisions relating to statutory undertakers, etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Schedule applies.

35. In this Part of this Schedule—

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

"apparatus" means—

(a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(**7**)) belonging to or maintained by that specified undertaker;

(b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;

(c) in the case of a water undertaker—

(i) mains, pipes or other apparatus belonging to or maintained by that specified undertaker for the purposes of water supply; and

(ii) mains, pipes or other apparatus that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe) of the Water Industry Act 1991(**8**); and

(d) in the case of a sewerage undertaker—

(**7**) 1989 c. 29.
(**8**) 1991 c. 56.

(i) any drain or works vested in the specified undertaker under the Water Industry Act 1991; and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (agreement to adopt sewer, drain or sewage disposal works, at future date) of that Act,

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

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

"functions" includes powers and duties;

"in", in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over, across, along or upon land;

"plans" includes sections, specifications and method statements; and

"specified undertaker" means—

(a) National Grid Electricity Transmission Plc, whose registered office is 1-3 Strand, London WC2N 5EH;

(b) National Grid Gas Plc, whose registered office is 1-3 Strand, London WC2N 5EH;

(c) Thames Water Utilities Limited, whose registered office is Clearwater Court, Vastern Road, Reading, Berkshire RG1 8DB; and

(d) Barking Power Limited, whose registered office is Barking Power Station, Chequers Lane, Dagenham, Essex RM9 6PF,

or any person succeeding any such company as a licence holder within the meaning of Part 1 of the Electricity Act 1989, a gas transporter within the meaning of Part 1 of the Gas Act 1986(**9**), a water undertaker within the meaning of the Water Industry Act 1991, or as a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, and "the specified undertaker" in relation to any apparatus means the specified undertaker to whom the apparatus belongs or by whom it is maintained.

On-street apparatus

36. This Part of this Schedule does not apply to anything done or proposed to be done in relation to or affecting apparatus in respect of which the relations between TfL and the specified undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in stopped up streets

37. Where any street is stopped up under article 9 (stopping up of streets), any specified undertaker whose apparatus is in the street will have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and TfL must grant to the specified undertaker legal easements reasonably satisfactory to the specified undertaker in respect of such apparatus and access to it, but nothing in this paragraph will affect any right of TfL or of the specified undertaker to require the removal of that apparatus under paragraph 40 or the power of TfL to carry out works under paragraph 42.

(**9**) 1986 c. 44.

38. TfL must not give less than 28 days' notice in writing of its intention to stop up any street under article 9 (stopping up of streets) to any specified undertaker whose apparatus is in that street

Acquisition of land

39.—(1) Regardless of any provision in this Order or anything shown on the deposited plans TfL must not acquire any apparatus other than by agreement with the specified undertaker.

(2) TfL may, in the exercise of the powers conferred by this Order, acquire or appropriate any interest in any land in which any apparatus is placed and, following the removal of such apparatus in accordance with the provisions of this Part of this Schedule, any rights in that land relating to that apparatus are extinguished, but that apparatus must not be removed under this Part of this Schedule and any right of a specified undertaker to use, maintain or renew that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the specified undertaker in question.

Removal of apparatus

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

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of TfL, or TfL is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the specified undertaker in question must, on receipt of a written notice to that effect from TfL, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) The obligation imposed on the specified undertaker under sub-paragraph (2) does not extend to the exercise by the specified undertaker of any power to acquire any land or rights in land by compulsory purchase order.

(4) Any alternative apparatus to be constructed in land of TfL under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the specified undertaker in question and TfL or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

(5) The specified undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 45 (arbitration), and after the grant to the specified undertaker of any such facilities and rights as are referred to in sub-paragraphs (1) or (2), proceed with all reasonable despatch to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by TfL to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if TfL gives notice in writing to the specified undertaker in question that it desires itself to execute any work to which this sub-paragraph applies, that work, instead of being executed by the specified undertaker, may be executed by TfL with the prior written consent of the specified undertaker (which must not be unreasonably withheld or delayed and is to be subject to any such conditions as are reasonable and proper to protect the

apparatus) in accordance with plans and in a position agreed between the specified undertaker and the promoter or, in default of agreement, determined by arbitration, with all reasonable despatch under the superintendence, if given, and to the reasonable satisfaction of the specified undertaker.

(7) In carrying out any work under sub-paragraph (6) TfL must comply with all statutory obligations which would have been applicable had the works been carried out by the specified undertaker.

(8) Sub-paragraph (6) applies to any part of any work necessary in connection with construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land of TfL.

(9) Nothing in sub-paragraph (6) authorises TfL to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

Facilities and rights for alternative apparatus

41.—(1) Where, in accordance with the provisions of this Part of this Schedule, TfL affords to a specified undertaker facilities and rights for the construction, use, maintenance and renewal in land of TfL of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between TfL and the specified undertaker in question or in default of agreement settled by arbitration in accordance with article 45 (arbitration).

(2) In settling those terms and conditions in respect of the alternative apparatus to be constructed across or along the authorised works, the arbitrator must—

(a) give effect to all reasonable requirements of TfL for ensuring the safety and efficient operation of the authorised 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 TfL or the traffic on the railway; and

(b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions if any applicable to the apparatus constructed across or along the authorised works for which the alternative apparatus is to be substituted and to any other reasonable requirements of the specified undertaker.

(3) If the facilities and rights to be afforded by TfL 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 specified undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation to or by TfL by or to that specified undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection and plan approval

42.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by TfL under paragraph 40(1), TfL must submit to the specified undertaker in question plans of those works.

(2) Those works are to be executed only in accordance with the plans submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the specified undertaker for the alteration or otherwise for the protection

of the apparatus, or for securing access to it, and an officer of the specified undertaker is entitled to watch and inspect the execution of those works.

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

(4) If a specified undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by TfL, reasonably requires the removal of any apparatus and gives written notice to TfL of that requirement, paragraphs 34 to 41 apply as if the removal of the apparatus had been required by TfL under paragraph 40(1).

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

(6) TfL is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the specified undertaker in question notice as soon as is reasonably practicable and plans of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) Nothing in sub-paragraph (6) entitles TfL to carry out works to any apparatus but, upon receipt of notice from TfL, the specified undertaker must proceed to carry out such works as may be required without unreasonable delay.

Expenses

43.—(1) Subject to the following provisions of this paragraph, TfL must repay to a specified undertaker the reasonable expenses incurred by that specified undertaker in, or in connection with—

(a) the inspection, 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 (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of facilities and rights or exercise of statutory powers for such apparatus);

(b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by TfL of any power under this Order; and

(c) the survey of any land, apparatus or works; the inspection, superintendence and monitoring of works; or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by TfL of any power under this Order; and any other work or thing rendered reasonably necessary in consequence of the exercise by TfL of any such power,

within a reasonable time of being notified by the specified undertaker that it has incurred such expenses.

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

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

(a) alternative apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by TfL or, in default of agreement, is not determined by arbitration in accordance with article 45 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the specified undertaker in question by virtue of sub-paragraph (1), is to be reduced by the amount of that excess.

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

(a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as 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 must be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a specified undertaker in respect of works by virtue of sub-paragraph (1) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the specified undertaker any financial benefit by deferment of the time for renewal of the apparatus in the normal course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled "Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)" and dated June 1992 and approved by the Secretary of State on 30th June 1992, as revised and re-issued from time to time.

(6) In any case where work is carried out by TfL under paragraphs 40(6) to (8) and, if such work had been carried out by the specified undertaker, the repayment made to the specified undertaker under sub-paragraph (1) would fall to be reduced under sub-paragraphs (3) to (5), the specified undertaker must pay to the TfL such sum as represents the amount of that reduction.

Indemnity

44.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the authorised 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 a specified undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any specified undertaker, TfL must bear and pay the cost reasonably incurred by that specified undertaker in making good such damage or restoring the supply, and must—

(a) make reasonable compensation to that specified undertaker for any other expenses, loss, damages, penalty or costs incurred by the specified undertaker; and

(b) indemnify the specified undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or incurred by, the specified undertaker,

by reason or in consequence of any such damage or interruption; and the fact that any act or thing may have been done by the specified undertaker on behalf of TfL or in accordance with plans approved by the specified undertaker or in accordance with any requirement of the specified undertaker or under its supervision does not, subject to sub-paragraph (2), excuse TfL from any liability under the provisions of this paragraph.

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

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

Access

45. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed TfL must provide such alternative means of access to that apparatus as will enable the specified undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

Cooperation

46. Where in consequence of the proposed construction of any of the authorised works, TfL or the specified undertaker requires the removal of apparatus under paragraph 40(1) or the specified undertaker makes requirements for the protection or alteration of apparatus under paragraph 42(2), TfL must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and the specified undertaker must use all reasonable endeavours to co-operate with TfL for that purpose.

Exercise of safeguarding and survey powers

47.—(1) TfL must, so far as is reasonably practicable, exercise the powers conferred by article 16 (protective works to buildings) so as not to obstruct or render less convenient the access to any apparatus.

(2) TfL must not, in the exercise of the powers conferred by section 11(3) (powers of entry) of the 1965 Act, as applied by this Order, or by article 18 (power to survey and investigate land, etc.), make any trial holes which interfere with any apparatus without the consent of the specified undertaker (which must not be unreasonably withheld).

Arbitration

48. Any difference arising between TfL and a specified undertaker under this Part of this Schedule (other than a difference as to its meaning or construction) must be determined by arbitration in the manner provided by article 45 (arbitration) and in determining any difference under this Part of this Schedule the arbitrator may, if the arbitrator thinks fit, require TfL to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with the use of any apparatus.

PART 4

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

49.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between TfL and the operator.

(2) In this Part of this Schedule—

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

"electronic communications apparatus" has the same meaning as in the electronic communications code;

"the electronic communications code" has the same meaning as in Chapter 1 of Part 2 of the Communications Act 2003(**10**);

"electronic communications code network" means—

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

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

"electronic communications code operator" means a person in whose case the electronic communications code is applied by a direction under section 106 (application of the electronic communications code) of the Communications Act 2003; and

"operator" means the operator of an electronic communications code network.

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

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

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

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

(i) make reasonable compensation to an operator for loss sustained by it; and

(ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

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

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

(4) Any difference arising between TfL and the operator under this paragraph is to be referred to and settled by arbitration under article 45 (arbitration).

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

(a) any apparatus in respect of which the relations between TfL and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or

(**10**) 2003 c. 21. See section 106.

(b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.