

SCHEDULES

SCHEDULE 1

Articles 2(1) and 3

SCHEDULED WORKS

In the County of Merseyside, Metropolitan Borough of Knowsley—

Work No. 1	Re-alignment of an existing railway (1,221 metres in length), commencing by a junction with the Liverpool Bolton and Bury Line 10 metres north-east of County Road, proceeding thence in a generally north-eastern direction and terminating by a junction with the Liverpool Bolton and Bury Line beneath the bridge carrying Dale Lane.
Work No. 2	A railway (647 metres in length) commencing by a junction with Work No. 3 250 metres north-east of County Road, proceeding thence in a generally north-eastern direction parallel to and immediately south-east of Work No. 1 and parallel to and immediately north-west of Work No. 3 and terminating by a junction with Work No. 4 320 metres south-west of Dale Lane.
Work No. 3	A railway (681 metres in length) commencing 210 metres north-east of County Road, proceeding thence in a generally north-eastern direction parallel to and immediately south-east of Work No. 1 and Work No. 2 and terminating by a junction with Work No. 4 320 metres south-west of Dale Lane.
Work No. 4	A railway (137 metres in length) commencing by a junction with Work No. 2 and Work No. 3 320 metres south-west of Dale Lane, proceeding thence in a generally north-eastern direction, including trap points, and terminating by a junction with Work No. 1 180 metres south-west of Dale Lane.
Work No. 4A	A railway (63 metres in length) commencing by a junction with Work No. 4 310 metres south-west of Dale Lane, proceeding thence in a generally eastern direction and terminating by a junction with Work No. 6.
Work No. 5	A railway (57 metres in length) commencing by a junction with Work No. 1 185 metres north-east of County Road, proceeding thence

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Work No. 6	<p>in a generally north-eastern direction and terminating by a junction with Work No. 3 245 metres north-east of County Road.</p> <p>A railway (1,543 metres in length) commencing by a junction with Work No. 4A 250 metres south-west of Dale Lane, proceeding thence in a generally south-eastern direction to the south of Dale Lane and the north of the Northwood housing estate and terminating by a junction with Work No. 7 70 metres to the west of the western boundary of the North Mersey Business Park.</p>
Work No. 7	<p>A railway (1,430 metres in length) commencing by a junction with Work No. 6 150 metres east of the Liverpool Bolton and Bury Line, proceeding thence in a generally south-eastern direction parallel to and immediately north of Work No. 6, including two crossovers to Work No. 6 and terminating 45 metres to the west of the western boundary of the North Mersey Business Park.</p>
Work No. 8	<p>A railway (530 metres in length) commencing by a junction with Work No. 7 45 metres south-east of the junction between North Perimeter Road and Dale Lane, proceeding thence in a generally south-eastern direction and terminating by a junction with Work No. 7 100 metres to the west of the western boundary of the North Mersey Business Park.</p>
Work No. 9	<p>A new drain (26 metres in length) commencing 26 metres north of existing North West Water manhole 2502, proceeding thence in a generally southerly direction and terminating at existing North West Water manhole 2502 (Ordnance Survey reference point SJ 343225/399560).</p>

SCHEDULE 2

Article 5

FOOTPATH TO BE STOPPED UP

(1) <i>Area</i>	(2) <i>Footpaths to be stopped up</i>	(3) <i>Extent of stopping up</i>
Borough of Knowsley	Footpath between Portland Road, Northwood Estate and the Dale Lane bridge over the Liverpool Bolton and Bury Line	Between the points FS1 and FS2

SCHEDULE 3

Article 13

MODIFICATION OF COMPENSATION AND COMPULSORY PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS

Compensation enactments

1. The enactments for the time being in force with respect to compensation for the compulsory purchase of land shall apply with the necessary modifications as respects compensation in the case of a compulsory acquisition under this Order of a right by the creation of a new right as they apply as respects compensation on the compulsory purchase of land and interests in land.

2.—(1) Without prejudice to the generality of paragraph 1 above, the Land Compensation Act 1973⁽¹⁾ shall have effect subject to the modifications set out in sub-paragraphs (2) and (3) below. (2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4 below—

- (a) for the words “land is acquired or taken” there shall be substituted the words “a right over land is purchased”; and
- (b) for the words “acquired or taken from him” there shall be substituted the words “over which the right is exercisable”.

(3) In section 58(1) (determination of material detriment where part of house etc. proposed for compulsory acquisition), as it applies to determinations under section 8 of the 1965 Act as substituted by paragraph 5 below—

- (a) for the word “part” in paragraphs (a) and (b) there shall be substituted the words “a right over land consisting”;
- (b) for the word “severance” there shall be substituted the words “right over the whole of the house, building or manufactory or of the house and the park or garden”;
- (c) for the words “part proposed” there shall be substituted the words “right proposed”; and
- (d) for the words “part is” there shall be substituted the words “right is”.

Adaptation of the 1965 Act

3.—(1) The 1965 Act shall have effect with the modifications necessary to make it apply to the compulsory acquisition under this Order of a right by the creation of a new right as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

- (a) the right acquired or to be acquired; or
- (b) the land over which the right is or is to be exercisable.

(2) Without prejudice to the generality of sub-paragraph (1) above, Part I of the 1965 Act shall apply in relation to the compulsory acquisition under this Order of a right by the creation of a new right with the modifications specified in the following provisions of this Schedule.

4. For section 7 of the 1965 Act (measure of compensation) there shall be substituted the following section—

“7. In assessing the compensation to be paid by the acquiring authority under this Act regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired is depreciated by the acquisition of the right but also to the damage

(1) 1973 c. 26.

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(if any) to be sustained by the owner of the land by reason of its severance from other land of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”

5. For section 8 of the 1965 Act (provisions as to divided land) there shall be substituted the following—

“8. —

(1) Where in consequence of the service on a person under section 5 of this Act of a notice to treat in respect of a right over land consisting of a house, building or manufactory or of a park or garden belonging to a house (“the relevant land”)—

- (a) a question of disputed compensation in respect of the purchase of the right would apart from this section fall to be determined by the Lands Tribunal (“the tribunal”); and
- (b) before the tribunal has determined that question the person satisfies the tribunal that he has an interest which he is able and willing to sell in the whole of the relevant land and—
 - (i) where that land consists of a house, building or manufactory, that the right cannot be purchased without material detriment to that land; or
 - (ii) where that land consists of such a park or garden, that the right cannot be purchased without seriously affecting the amenity or convenience of the house to which that land belongs;

the Knowsley Industrial Park (Rail Terminal) Order 1999 (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

(2) Any question as to the extent of the land in which the Order is deemed to authorise the purchase of an interest by virtue of subsection (1) of this section shall be determined by the tribunal.

(3) Where in consequence of a determination of the tribunal that it is satisfied as mentioned in subsection (1) of this section the Order is deemed by virtue of that subsection to authorise the purchase of an interest in land, the acquiring authority may, at any time within the period of six weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

6. The following provisions of the 1965 Act (which state the effect of a deed poll executed in various circumstances where there is no conveyance by persons with interests in the land), that is to say—

- (a) section 9(4) (failure by owners to convey);
- (b) paragraph 10(3) of Schedule 1 (owners under incapacity);
- (c) paragraph 2(3) of Schedule 2 (absent and untraced owners); and
- (d) paragraphs 2(3) and 7(2) of Schedule 4 (common land);

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired is vested absolutely in the acquiring authority.

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

8. Section 20 of the 1965 Act (protection for interests of tenants at will etc.) shall apply with the modifications necessary to secure that persons with such interests in land as are mentioned in that section are compensated in a manner corresponding to that in which they would be compensated on a compulsory acquisition under this Order of that land, but taking into account only the extent (if any) of such interference with such an interest as is actually caused, or likely to be caused, by the exercise of the right in question.

9. Section 22 of the 1965 Act (protection of acquiring authority's possession where by inadvertence an estate, right or interest has not been got in) shall be so modified as to enable the acquiring authority, in circumstances corresponding to those referred to in that section, to continue to be entitled to exercise the right acquired, subject to compliance with that section as respects compensation.

SCHEDULE 4

Article 26

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc. on land acquired

1.—(1) Subject to the following provisions of this paragraph, sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers, etc. and power of statutory undertakers, etc. to remove or re-site apparatus) shall apply in relation to any land acquired under this Order, or which is held by the Council and is appropriated or used (or about to be used) by it for the purposes of the Order or purposes connected therewith, and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1) above, references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public telecommunications operator is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1) above, any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the Council compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) above shall not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer; or
- (b) the owner of a private sewer which communicated with that sewer;

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shall be entitled to recover from the Council compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1) above, as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which Part III of the 1991 Act applies.

(6) In this paragraph—

“public telecommunications operator” means—

- (a) a person authorised, by a licence to which section 9 of the Telecommunications Act 1984 applies, to run a public telecommunications system; or
- (b) a person to whom the telecommunications code has been applied pursuant to section 10 of that Act; and

“public utility undertakers” has the same meaning as in the Highways Act 1980.

SCHEDULE 5

Article 27

FOR PROTECTION OF RAILTRACK

1.—(1) The following provisions of this Schedule shall, unless otherwise agreed in writing between the Council and Railtrack PLC, have effect:—

(2) In this Schedule—

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

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

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

“Railtrack” means Railtrack PLC and any associated company of Railtrack PLC 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 736 of the Companies Act 1985) the holding company of Railtrack PLC, a subsidiary of Railtrack PLC or another subsidiary of the holding company of Railtrack PLC;

“railway property” means any railway belonging to Railtrack PLC and any works, apparatus and equipment belonging to Railtrack connected with any such railway and includes any land held or used by Railtrack 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.

2.—(1) The Council shall not under the powers conferred by this Order acquire or use or acquire new rights over any railway property unless such acquisition or use is with the consent of Railtrack PLC.

(2) Without prejudice to any requirement as to fencing made by Railtrack under paragraph 3(5) below on approval of plans, the Council shall provide and maintain, to the reasonable satisfaction of the engineer, a boundary fence incorporating gates where appropriate between railway property and any adjoining land of the Council acquired or appropriated for the purpose of Work No. 6.

(3) The Council shall not exercise the powers conferred by article 8 above or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Railtrack PLC.

(4) The Council shall 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 Railtrack PLC.

(5) The Council shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 4 to this Order, in relation to any right of access of Railtrack to railway property but such right of access may be diverted with the consent of Railtrack PLC.

(6) Where Railtrack PLC is asked to give its consent pursuant to sub-paragraph (3), (4), or (5) above, or to give its consent to the acquisition of new rights over or the use of railway property under sub-paragraph (1) above, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

3.—(1) The Council shall before commencing construction of any specified work supply to Railtrack PLC proper and sufficient plans of that work for the reasonable approval of the engineer and shall not commence such construction of the specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) above shall not be unreasonably withheld, and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to Railtrack PLC the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Railtrack PLC, Railtrack PLC gives notice to the Council that Railtrack PLC 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 Railtrack PLC then, if the Council desires such part of the specified work to be constructed, Railtrack PLC shall construct it (together with any adjoining part of the specified work which the Council reasonably requires to be constructed in one operation with that work) with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Council in accordance with the plans approved or deemed to be approved or settled under this paragraph and under the supervision (where appropriate and if given) of the Council.

(4) In the event of Railtrack PLC not constructing or completing any part of a specified work pursuant to sub-paragraph (3) above with all reasonable dispatch and to the reasonable satisfaction of the Council in accordance with such programme as may be agreed with the Council or settled by arbitration, Railtrack PLC shall pay compensation to the Council for any loss which it may sustain as a result.

(5) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Railtrack PLC or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work), and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack PLC or by the Council, if Railtrack PLC so desires, with all reasonable dispatch and the Council shall not commence the construction of the specified works until the engineer has notified the Council that the protective works have been completed to his reasonable satisfaction.

4.—(1) Any specified work shall, when commenced, be constructed—

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- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 3 above;
- (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 Railtrack PLC or the traffic thereon and the use by passengers of railway property;

and, if any damage to railway property or any such interference or obstruction is caused or takes place in consequence of the construction of a specified work, the Council shall, notwithstanding any such approval, make good such damage and shall pay to Railtrack PLC all reasonable expenses to which Railtrack may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(2) Nothing in this paragraph shall impose any liability on the Council with respect to any damage, costs, expenses or loss attributable to the negligence of Railtrack or its servants, contractors or agents.

5. The Council shall—

- (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 he may reasonably require with regard to a specified work or the method of constructing it.

6. Railtrack PLC shall at all times afford reasonable facilities to the Council and its agents for access to any works carried out by Railtrack PLC under this Schedule during their construction and shall supply the Council with such information as it may reasonably require with regard to such works or the method of constructing them.

7.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of a specified work, or during a period of 12 months after the commencement of regular revenue-earning train operations using the new railways comprised in any specified work, in consequence of the construction of a specified work, and Railtrack PLC gives to the Council reasonable notice of its intention specifying the alterations or additions to be carried out, the Council shall pay to Railtrack PLC 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 Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 8(a) below, provide such details of the formula by which those sums have been calculated as the Council may reasonably require.

(3) 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 shall be set off against any sum payable by the Council to Railtrack PLC under this paragraph.

8. The Council shall repay to Railtrack PLC all reasonable fees, costs, charges and expenses reasonably incurred by Railtrack—

- (a) in constructing any part of a specified work on behalf of the Council as provided by paragraph 3(3) above or in constructing any protective works under the provisions of paragraph 3(5) above including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works; and

- (b) in respect of the approval by the engineer of plans submitted by the Council and the supervision by him of the construction of a specified work.

9.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2) below, electromagnetic interference with Railtrack’s apparatus generated by the operation of the authorised works (including the operation of trains using the new railways comprised in the works) where such interference is of a level which adversely affects the safe operation of Railtrack’s apparatus; and

“Railtrack’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the works) which are owned or used by Railtrack 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 shall apply to EMI only to the extent that such EMI is not attributable to any change to Railtrack’s apparatus carried out after approval of plans under paragraph 3(1) above for the relevant part of the authorised works giving rise to EMI (unless the Council 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) below, the Council shall in the design and construction of the authorised works take all measures necessary to prevent EMI and shall establish with Railtrack (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the Council’s compliance with sub-paragraph (3) above—

- (a) the Council shall consult with Railtrack PLC as early as reasonably practicable to identify all Railtrack’s apparatus which may be at risk of EMI, and thereafter shall continue to consult with Railtrack PLC (both before and after formal submission of plans under paragraph 3(1) above) to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Railtrack PLC shall make available to the Council all information in Railtrack’s possession reasonably requested by the Council in respect of Railtrack’s apparatus identified pursuant to paragraph (a) above;
- (c) Railtrack PLC shall allow the Council reasonable facilities for the inspection of Railtrack’s apparatus pursuant to paragraph (a) above.

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Railtrack’s apparatus, Railtrack shall not withhold its consent unreasonably to modifications of Railtrack’s apparatus, but the means of prevention and the method of their execution shall be selected in Railtrack PLC’s reasonable discretion and in relation to such modifications paragraph 3(1) above shall have effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning train operations on the new railways comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3) above, the testing or commissioning of the authorised works causes EMI then the Council shall immediately upon receipt of notification by Railtrack of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) the Council’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) above) to Railtrack’s apparatus.

(7) In the event of EMI having occurred—

- (a) the Council shall afford reasonable facilities to Railtrack PLC for access to the Council’s apparatus in the investigation of such EMI;

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- (b) Railtrack shall afford reasonable facilities to the Council for access to Railtrack's apparatus in the investigation of such EMI; and
- (c) Railtrack shall make available to the Council any additional material information in its possession reasonably requested by the Council in respect of Railtrack's apparatus or such EMI.

(8) Where Railtrack PLC approves modifications to Railtrack's apparatus pursuant to sub-paragraphs (5) or (6) above—

- (a) Railtrack shall allow the Council reasonable facilities for the inspection of the relevant part of Railtrack's apparatus;
- (b) any modifications to Railtrack's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the Council in accordance with paragraph 4 above.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 13(1) below shall apply to the costs and expenses reasonably incurred or losses suffered by Railtrack 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 Railtrack's apparatus) or in consequence of any EMI to which sub-paragraph (6) above applies.

(10) For the purpose of paragraph 8(a) above any modifications to Railtrack's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 32 above to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

10. If at any time after the completion of a specified work, not being a work vested in Railtrack, Railtrack PLC gives notice to the Council informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of railway property, the Council shall, 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.

11. The Council shall 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 Railtrack PLC unless it shall have first consulted Railtrack PLC and it shall comply with Railtrack PLC'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.

12. Any additional expenses which Railtrack may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Council, be repaid by the Council to Railtrack PLC.

13.—(1) The Council shall pay to Railtrack PLC all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Railtrack—

- (a) by reason of the construction or maintenance of a specified work or the failure thereof; or
- (b) by reason of any act or omission of the Council or of any person in its employ or of its contractors or others whilst engaged upon a specified work;

and the Council shall indemnify Railtrack from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Railtrack on behalf of the Council or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall

not (if it was done without negligence on the part of Railtrack or of any person in its employ or of its contractors or agents) excuse the Council from any liability under the provisions of this sub-paragraph.

(2) Railtrack PLC shall give the Council reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Council.

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

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

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

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Railtrack’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) above; and

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

14. In the assessment of any sums payable to Railtrack under this Schedule there shall 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 Railtrack if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Council under this Schedule or increasing the sums so payable.

15. The Council and Railtrack PLC may enter into, and carry into effect, agreements for the transfer to the Council 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 Railtrack PLC relating to any railway property.