

## SCHEDULES

### SCHEDULE 1

Articles 2(1) and 4

#### THE SCHEDULED WORKS

In this Schedule references to “the Catford Loop Lines” are to the railway between Nunhead and Shortlands and references to “the Chatham Main Lines”, “the Chatham Lines”, “the Chatham Fast Line” and “the Chatham Slow Line” are to the railway between London Victoria and Chatham.

In the London Borough of Bromley—

Work No. 1—A railway (1,045 metres in length) commencing by a junction with the Catford Loop Lines at a point 343 metres north of the northern side of the bridge (number 490) carrying Downs Hill over that railway, passing southwards beneath that road, then passing through a reinforced concrete tunnel box under the Chatham Lines between Beckenham Junction and Shortlands Stations and terminating by a junction with the up Chatham Fast Line at Shortlands Station at a point 61 metres south-east of the southern side of the bridge (number 55) carrying that up fast line over Beckenham Lane, including the said tunnel box and the provision of a reinforced concrete box at the western end of the said bridge carrying Downs Hill so as to carry the railway under that road.

Work No. 1A—A railway (302 metres in length), forming a connection between Work No. 1 and the down Chatham Fast Line, commencing by a junction with Work No.1 at a point 232 metres north-west of the western side of the bridge (number 55) carrying the said down fast line over Beckenham Lane, passing south-eastwards and terminating by a junction with that down fast line at Shortlands Station at a point 53 metres south-east of the southern side of the said bridge number 55.

Work No. 2—A railway (442 metres in length), being a realignment of the Catford Loop Lines, commencing by a junction with Work No.1 at a point 10 metres south-east of its commencement, passing southwards beneath Downs Hill, and terminating by a junction with the Catford Loop Lines at a point 97 metres south-east of the southern side of the bridge (number 490) carrying Downs Hill over that railway.

Work No. 3—A railway (690 metres in length), being a realignment of the Chatham Fast Lines between Beckenham Junction and Shortlands Stations, commencing by a junction with the Chatham Main Lines at a point 6 metres east of the eastern side of the bridge (number 54) carrying Downs Bridge Road over the said railway, passing eastwards then south-eastwards and terminating by a junction with Work No.1 at a point 4 metres north-west of the northern side of the bridge (number 55) carrying the up Chatham Fast Line over Beckenham Lane, including a subway under the railway to gain access for maintenance purposes.

Work No. 4—A railway (401 metres in length), being a raising of the Chatham Slow Lines, commencing by a junction with the Chatham Main Lines at a point 6 metres east of the eastern side of the bridge (number 54) carrying Downs Bridge Road over the said railway, passing eastwards over the tunnel box comprised in Work No. 1 and terminating by a junction with the Chatham Slow Lines at a point 395 metres east of the eastern side of the said bridge number 54.

Work No. 4A—A railway (357 metres in length), forming a connection between the up Chatham Slow Line and the down Chatham Fast Line, commencing by a junction with Work No. 4 at a point 359 metres east of the eastern side of the bridge (number 54) carrying Downs Bridge Road over the Chatham Lines, passing south-eastwards and terminating by a junction

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with Work No. 1A at a point 4 metres north-west of the bridge (number 55) carrying the down Chatham Fast Line over Beckenham Lane.

Work No. 5A—An access road, including a reconstruction of the existing access to 31 Downs Hill, commencing at the junction of that access with Downs Hill, passing south-eastwards and terminating at a point 133 metres south-east of its commencement.

Work No. 5B—An access road for construction purposes, commencing by a junction with the access road (Work No. 5A) at its commencement, passing southwards and terminating at a point 83 metres south of its commencement.

## SCHEDULE 2

Article 15

### 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<sup>(1)</sup> 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

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(1) 1973 c. 26.

Act to land are to be 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 Order 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 (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 (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) there shall be substituted the following—

(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 Railtrack (Shortlands Junction) Order 2001 (“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.”.

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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 3

Article 16

#### LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purpose for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised work</i>
London Borough of Bromley	8	Working site and access road (Work No. 5B)	Works Nos. 1, 1A, 2, 3, 4, 4A, 5A and 5B.
	11, 12b, 13b and 14b	Working site and access	Works Nos. 1, 1A, 3, 4 and 4A.
	18b	Working site, access and parking	Works Nos. 1, 1A, 3, 4 and 4A

SCHEDULE 4

Article 25

STATUTORY UNDERTAKERS ETC.

*Apparatus of statutory undertakers etc. on land acquired*

1. 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 or appropriated by Railtrack under this Order subject to the following provisions of this paragraph; 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 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 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 Railtrack 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. 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,

shall be entitled to recover from Railtrack 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 paragraph 1 above, as applied by that paragraph, shall not have effect in relation to apparatus as respects which Part III of the Street Works Act applies.

6. In this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990(2);

“public telecommunications operator” means—

- (a) a person authorised, by a licence to which section 9 of the Telecommunications Act 1984(3) 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(4).

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(2) 1990 c. 8.  
(3) 1984 c. 12.  
(4) 1980 c. 66.

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## SCHEDULE 5

Article 26

### PROTECTIVE PROVISIONS

#### Part I

##### Protection for electricity, gas and water undertakers

1.—(1) For the protection of the undertakers referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between Railtrack and the undertaker concerned, have effect.

(2) In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil their 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<sup>(5)</sup>) belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a public gas transporter for the purposes of gas supply; and
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply;

(not being apparatus in respect of which the relations between Railtrack and the undertakers are regulated by the provisions of Part III of the Street Works Act) 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 or upon land; and

“undertaker” means any licence holder within the meaning of Part I of the Electricity Act 1989, public gas transporter within the meaning of Part I of the Gas Act 1986<sup>(6)</sup> and water undertaker within the meaning of the Water Industry Act 1991<sup>(7)</sup>; and, in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

(3) The provisions of Schedule 4 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

2. Notwithstanding the temporary stopping up or diversion of any highway pursuant to article 10 of this Order, an undertaker shall be at liberty at all times to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain or use any apparatus which at the time of the stopping up or diversion was in that highway.

3. Notwithstanding anything in this Order or shown on the deposited plans Railtrack shall not acquire any apparatus otherwise than by agreement.

4.—(1) If, in the exercise of the powers of this Order, Railtrack acquire any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part of this Schedule and any right of an undertaker to maintain that apparatus in that land shall not be extinguished until

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(5) 1989 c. 29.

(6) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45).

(7) 1991 c. 56.

alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, Railtrack require the removal of any apparatus placed in that land, they shall give to the undertaker in question written notice of that requirement, together with a plan and section 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 of this Order an undertaker reasonably needs to remove any of its apparatus) Railtrack shall, subject to sub-paragraph (3) below, afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Railtrack and thereafter for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Railtrack, or Railtrack are unable to afford such facilities and rights as are mentioned in sub-paragraph (2) above, in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question shall, on receipt of a written notice to that effect from Railtrack, forthwith use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of Railtrack under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Railtrack or in default of agreement settled by arbitration pursuant to article 31.

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 31 above, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3) above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by Railtrack to be removed under the provisions of this Part of this Schedule.

(6) Notwithstanding anything in sub-paragraph (5) above, if Railtrack give notice in writing to the undertaker in question that they desire themselves to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of Railtrack, that work, in lieu of being executed by the undertaker, shall be executed by Railtrack with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) above shall authorise Railtrack 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 300 millimetres of the apparatus.

**5.—**(1) Where, in accordance with the provisions of this Part of this Schedule, Railtrack afford to an undertaker facilities and rights for the construction, and maintenance, in land of Railtrack of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between Railtrack and the undertaker in question or in default of agreement settled by arbitration in accordance with article 31 above.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any railway of Railtrack, the arbitrator shall—

- (a) give effect to all reasonable requirements of Railtrack for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Railtrack or the traffic on the railway; and

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(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 applicable to the apparatus, if any, constructed in or along the railway for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by Railtrack 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 less favourable on the whole to the 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 shall make such provision for the payment of compensation by Railtrack to that undertaker as appears to him to be reasonable having regard to all the circumstances of the particular case.

6.—(1) Not less than 28 days before commencing the execution of any works of the type referred to in paragraph 4(2) above that are near to, or will or may affect, any apparatus the removal of which has not been required by Railtrack under paragraph 4(2), Railtrack shall submit to the undertaker in question a plan, section and description of the works to be executed.

(2) Those works shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) above and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) below by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access thereto, and the undertaker shall be entitled by its officer to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under paragraph (2) above shall be made within a period of 21 days beginning with the date on which a plan, section and description under paragraph (1) above are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) above and in consequence of the works proposed by Railtrack, reasonably require the removal of any apparatus and give written notice to Railtrack of that requirement, the foregoing provisions of this Part of this Schedule shall apply as if the removal of the apparatus had been required by Railtrack under paragraph 4(2) above.

(5) Nothing in this paragraph shall preclude Railtrack 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, a new plan, section and description in lieu of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) Railtrack shall not be required to comply with sub-paragraph (1) above in a case of emergency but in that case it shall give to the undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (2) above in so far as is reasonably practicable in the circumstances.

7.—(1) Subject to the following provisions of this paragraph, Railtrack shall repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 4(2) above.

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

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

(a) 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, 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, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Railtrack or, in default of agreement, is not determined by 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 undertaker in question by virtue of sub-paragraph (1) above, shall be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) above shall, 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 undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

**8.—(1)** Subject to sub-paragraphs (2) and (3) below, if by reason or in consequence of the construction of any such works as are referred to in paragraph 4(2) above, 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 an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, Railtrack shall—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply, and
- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by, the undertaker,

by reason or in consequence of any such damage or interruption.

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

(3) An undertaker shall give Railtrack reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**9.** Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Railtrack and an undertaker in respect of any apparatus laid or erected in land belonging to Railtrack on the date on which this Order is made.

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## Part II

### Protection for telecommunications operators

1.—(1) For the protection of telecommunications operators the following provisions shall, unless otherwise agreed in writing between Railtrack and the telecommunications operators concerned, have effect.

(2) In this Part of this Schedule expressions defined in the Telecommunications Act 1984<sup>(8)</sup> have the same meanings as in that Act.

2. The temporary stopping up or diversion of any highway under article 10 of this Order shall not affect any right of a telecommunications operator under paragraph 9 of the telecommunications code to inspect or maintain any apparatus which, at the time of the stopping up or diversion, is in that highway.

## Part III

### Protection for sewerage undertakers

1.—(1) For the protection of sewerage undertakers the following provisions shall, unless otherwise agreed in writing between Railtrack and the sewerage undertaker concerned, have effect.

(2) In this Part of this Schedule—

“construction” includes placing or altering; and “constructed” shall be construed accordingly;

“sewer” means a public sewer within the meaning of the Water Industry Act 1991<sup>(9)</sup> and includes a disposal main within the meaning of that Act and any manholes, ventilating shafts, pumps or accessories forming part of any such sewer;

“specified work” means so much of the works as will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon, any sewer; and

“the undertaker” means the sewerage undertaker for the area of the works or whose sewers are affected.

(3) The provisions of Schedule 4 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

2.—(1) Before commencing the construction or renewal of any specified work, and in the case of any temporary work its removal, Railtrack shall submit to the undertaker plans for those works as described in sub-paragraph (2) below (“the plans”) and shall not commence that work until the undertaker has signified in writing its approval of those plans.

(2) The plans to be submitted to the undertaker shall be detailed plans, drawings, sections and specifications describing the position and manner in which, and the level at which, any specified work is proposed to be constructed and the position of all sewers of the undertaker within 15 metres of that work or upon which the specified work will impose a load and shall include detailed drawings of every alteration which Railtrack may propose to any such sewers.

(3) For the purpose of the preparation of the plans and subject to such reasonable requirements as it may specify, the undertaker shall permit Railtrack to have access to plans in its possession and to any of its sewers.

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<sup>(8)</sup> 1984 c. 12.

<sup>(9)</sup> 1991 c. 56.

- (4) Any approval of the undertaker required under this paragraph—
- (a) may be given subject to reasonable conditions,
  - (b) shall not be unreasonably withheld,
  - (c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

(5) The undertaker may require such modifications to be made to the plans as may be reasonably necessary to secure the sewerage system of the undertaker against interference or risk of damage and to provide and secure proper and convenient means of access to any sewer.

**3.—**(1) The specified work shall be constructed, and in the case of any temporary work removed, in accordance with the plans approved, or deemed to have been approved, or settled by arbitration, as the same may be amended from time to time by agreement between Railtrack and the undertaker, and in the construction or removal of the specified work Railtrack shall comply with all reasonable requirements of the undertaker and shall provide new, altered or substituted sewers or works for the protection of any sewers of the undertaker, in such manner as the undertaker may reasonably require, by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such sewer by reason of any specified work.

(2) All works under sub-paragraph (1) above, for the provision of new, altered or substituted sewers or the protection of any sewers of the undertaker shall, where so required by the undertaker, be constructed by the undertaker or under the supervision, if given, of an officer of the undertaker duly appointed for the purpose, and all costs, charges and expenses reasonably incurred by the undertaker in the construction of such works, or in the preparation or examination of plans or designs of such works, or in such supervision, shall be paid to the undertaker by Railtrack.

(3) When works for the provision of any such new, altered or substituted sewer, or any such protective work forming part of any such new, altered or substituted sewer or any existing sewer of the undertaker, have been completed under this Part of this Schedule to the reasonable satisfaction of the undertaker, they shall be vested in and become maintainable by the undertaker.

**4.—**(1) Subject to the following provisions of this Part of this Schedule, Railtrack shall be liable to make good, or, if the undertaker so decides, to repay to the undertaker any expense reasonably incurred by the undertaker in making good, all injury or damage to any sewers, drains or works vested in the undertaker (except in so far as such sewer, drain or work is intended for alteration or removal for the purposes of the specified work) caused by or resulting from the construction of any specified work or any investigation undertaken in relation to any specified works and the provision of any new, altered or substituted sewer or any protective work under this Part of this Schedule and shall pay to the undertaker any additional expense to which it may be put in the maintenance, management or renewal or any new, altered or substituted sewer which may be necessary in consequence of the construction of any specified work.

(2) Railtrack shall indemnify the undertaker against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the undertaker which the undertaker may incur or have to pay or which it may sustain in consequence of the construction of a specified work or of the failure or want of repair of a specified work or any subsidence cause by the construction of any specified work or in consequence of any act or omission of Railtrack, their contractors, agents, workmen or servants, whilst engaged upon the specified work and any new, altered or substituted sewer or any protective work.

(3) The undertaker shall give to Railtrack reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement in writing of Railtrack.

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(4) Nothing in sub-paragraph (1) or (2) above shall impose any liability on Railtrack in respect of any damage to the extent that it is attributable to the act, neglect or default of the undertaker, its officers, servants, or, if not Railtrack, its contractors or agents.

(5) If in pursuance of the provisions of this Part of this Schedule—

(a) a sewer of better type, of greater capacity or of greater dimensions is placed in substitution for an existing sewer of worse type, of smaller capacity or of smaller dimensions, except where this is due to using the nearest currently available type, or

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

and the placing of a sewer of that type or capacity or of those dimensions or the placing of a sewer at that depth, as the case may be, is not agreed by Railtrack or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the sewer 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 undertaker by virtue of sub-paragraph (1) above shall be reduced by the amount of that excess.

(6) For the purposes of sub-paragraph (5) above an extension of a sewer to a length greater than the length of an existing sewer shall not be treated as a placing of a sewer of greater dimensions than those of the existing sewer.

(7) An amount which apart from this sub-paragraph would be payable to the undertaker in respect of works by virtue of sub-paragraph (1) above (and having regard, where relevant, to sub-paragraph (5) above) shall, if the works include the placing of a sewer provided in substitution for a sewer placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the sewer in the ordinary course, be reduced by the amount which represents that benefit.

(8) Sub-paragraphs (1) and (5) to (7) above shall not apply where the authorised works constitute major transport works for the purposes of Part III of the Street Works Act, but instead—

(a) the allowable costs of the construction of works under this Part of this Schedule shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and

(b) the allowable costs shall be borne by Railtrack and the undertaker in such proportions as may be prescribed by any such regulations.

**5.—(1)** An officer of the undertaker duly appointed for the purpose may, at any reasonable time and, if required by Railtrack, under their supervision and control, enter upon and inspect any specified work or any other works constructed under this Part of this Schedule.

(2) The approval by the undertaker of any plans, drawings, sections or specifications or the supervision by it of any work under this Part of this Schedule shall not (if it was done without negligence on the part of the undertaker, its officers, servants, or, if not Railtrack, its contractors or agents) exonerate Railtrack from any liability or affect any claim for damages by the undertaker.

**6.** Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 of this Order, the undertaker shall be at liberty at all times to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain, protect, or use any sewer which at the time of the stopping up or diversion was in that highway.

**7.** As soon as reasonably practicable after the completion of the construction of the specified works, Railtrack shall deliver to the undertaker a plan and section showing the position and level

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of those works as constructed and all new, altered or substituted works provided under this Part of this Schedule.