

SCHEDULES

SCHEDULE 10

Article 47

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS AND WATER UNDERTAKERS

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

(2) In this Part of this Schedule—

“adequate alternative apparatus” means alternative apparatus adequate to enable the 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(1)) belonging to or maintained by that undertaker; or
- (b) in the case of a gas or water undertaker, any mains, pipes or other apparatus belonging to or maintained by such undertaker;

(not being, except in paragraph 2, apparatus in respect of which the relations between Network Rail and the undertaker in question are regulated by the provisions of Part 3 of the Street Works Act) and includes any structure for the lodging therein of apparatus or for giving 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;

“plan” includes sections and method statements; and

“undertaker” means any person authorised to carry on, in any area within which Network Rail are by this Order authorised to purchase land or execute works, an undertaking for the supply of water or the supply, transportation or storage of gas or for the generation, transmission or supply of electricity; and, in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

(3) The provisions of Schedule 9 (provisions relating to statutory undertakers etc.) 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 under the powers of article 16 (temporary stopping up of streets), 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, renew or use any apparatus which at the time of the stopping up or diversion was in that highway.

(1) 1989 c. 29.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

3.—(1) Network Rail, in the case of the powers conferred by article 22 (protective works to buildings), shall, so far as is reasonably practicable, so exercise those powers as not to obstruct or render less convenient the access to any apparatus and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of any undertaker or any interruption in the supply of electricity, gas or water, as the case may be, by the undertaker is caused, Network Rail shall bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make reasonable compensation to the undertaker for any loss sustained by it; and
- (b) indemnify the undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker,

by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on Network Rail with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of an undertaker or its contractors or workmen; and the undertaker shall give to Network Rail reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of Network Rail.

4. Notwithstanding anything in this Order or shown on the deposited plans Network Rail shall not acquire any apparatus under the powers of this Order otherwise than by agreement.

5.—(1) If Network Rail, in the exercise of the powers of this Order, acquires 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 use, maintain or renew that apparatus in that land shall not be extinguished until adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If Network Rail, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, requires the removal of any apparatus placed in that land, it 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 so as to provide adequate alternative apparatus in place of the apparatus to be removed, and in that case (or if in consequence of the exercise of any of the powers of this Order the undertaker reasonably requires to remove any apparatus) Network Rail shall, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of the alternative apparatus in other land of Network Rail and thereafter for the use, maintenance and renewal of that apparatus.

(3) If the alternative apparatus or any part thereof is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or part of it is to be constructed, the undertaker shall, on receipt of a written notice to that effect from Network Rail, forthwith use its best endeavours to obtain the necessary facilities and rights in that last-mentioned land.

(4) Any alternative apparatus to be constructed in land of Network Rail 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 Network Rail or in default of agreement settled by arbitration under article 51 (arbitration).

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

(6) Notwithstanding anything in sub-paragraph (5), if Network Rail gives notice in writing to the undertaker in question that it desires itself 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 Network Rail, that work, instead of being carried out by the undertaker, shall be carried out by Network Rail in accordance with plans and specifications and in a position agreed between the undertaker and Network Rail or in default of agreement determined by arbitration, with all reasonable dispatch under the superintendence (if given) and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) shall authorise Network Rail 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.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to an undertaker facilities and rights for the construction, maintenance and renewal in land of Network Rail of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between Network Rail and the undertaker in question or in default of agreement settled by arbitration in accordance with sub-paragraphs (2) and (3).

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

- (a) give effect to all reasonable requirements of Network Rail 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 Network Rail 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 for which the alternative apparatus is to be substituted and have regard to the undertaker's ability to fulfil its service obligations.

(3) If the facilities and rights to be afforded by Network Rail in respect of any alternative apparatus and the terms and conditions subject to which the same 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 Network Rail to the undertaker as appears to him to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before commencing the execution of any works that are referred to in paragraph 5(2) and are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 5(2), Network Rail 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) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) 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 the undertaker under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an undertaker within 21 days after the submission to it of a plan, section and description, shall, in consequence of the works proposed by Network Rail, reasonably require the removal of any

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

apparatus and gives written notice to Network Rail 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 Network Rail under paragraph 5(2).

(5) Nothing in this paragraph shall preclude Network Rail 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 of the works in place 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) Network Rail shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the undertaker in question notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (2) so far as reasonably practicable in the circumstances.

8. If in consequence of the exercise of the powers of this Order the access to any apparatus is materially obstructed Network Rail shall provide alternative means of access to such apparatus which is, so far as reasonably practicable, no less convenient than the access enjoyed by the undertaker prior to the obstruction.

9. Where, by reason of this Order, any part of any highway in which any apparatus is situate ceases to be part of a highway an undertaker may exercise the same rights of access to such apparatus as it enjoyed immediately before the coming into force of this Order, but nothing in this paragraph shall affect any right of Network Rail or of the undertaker to require removal of such apparatus under this Part of this Schedule or the power of Network Rail to execute works in accordance with paragraph 7.

10.—(1) Subject to the following provisions of this paragraph, Network Rail shall pay to an undertaker the costs, charges and expenses reasonably 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 5(2), less the value of any apparatus removed under the provisions of this Part of this Schedule (that value being calculated after removal), and shall also make compensation to that undertaker—

(a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this Part of this Schedule); and

(b) for any other expenses, loss, damages, penalty or costs incurred by that undertaker,

by reason of the execution, maintenance, user or failure of those works or otherwise by reason of the exercise by Network Rail of the powers of this Order.

(2) 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, 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,

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 Network Rail 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 apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be,

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

the amount which apart from this paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(3) For the purposes of sub-paragraph (2)—

- (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.

(4) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant, to sub-paragraph (2)) 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.

(5) Sub-paragraphs (1) to (4) shall not apply where the authorised works constitute major transport works for the purposes of Part 3 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 Network Rail and the undertaker in such proportions as may be prescribed by any such regulations.

11.—(1) Where, by reason of the stopping up of any highway pursuant to this Order, any apparatus belonging to an undertaker and laid or placed in such highway or elsewhere is rendered derelict or unnecessary, Network Rail shall, subject to sub-paragraph (2), pay to that undertaker the then value of such apparatus (which shall thereupon become the property of Network Rail) and the reasonable cost of and incidental to the cutting off of such apparatus from any other apparatus, and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason of such apparatus being so rendered derelict or unnecessary.

(2) Network Rail shall not under the provisions of this paragraph be required to pay to an undertaker the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the undertaker, other apparatus has at the expense of Network Rail been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary.

12. Any difference arising between Network Rail and an undertaker under this Part of this Schedule shall be referred to and settled by arbitration under article 51 (arbitration).

13. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the coming into force of this Order.

PART 2

PROTECTION FOR OPERATORS OF AN ELECTRONIC COMMUNICATIONS CODE NETWORK

14. For the protection of any operator of an electronic communications code network (in this Part of this Schedule referred to as “the operator”) the following provisions shall, unless otherwise agreed in writing between Network Rail and the operator, have effect.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

15. The temporary stopping up or diversion of any highway under article 16 (temporary stopping up of streets) shall not affect any right of the operator under paragraph 9 of the electronic communications code to maintain any apparatus which, at the time of the stopping up or diversion, is in that highway.

16.—(1) Subject to sub-paragraphs (2) to (4), if by reason or in consequence of the construction of the authorised works or any subsidence resulting from any of those works, any damage is caused to any electronic communications apparatus belonging to British Telecommunications plc (“BT”), 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 BT, or there is any interruption in the supply of the service provided by BT, Network Rail shall bear and pay the cost reasonably incurred by BT in making good such damage or restoring the supply and shall—

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

(2) Sub-paragraph (1) shall not apply to any apparatus in respect of which the relations between Network Rail and BT are regulated by the provisions of Part 3 of the Street Works Act or to any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

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

(4) BT shall give Network Rail reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of Network Rail 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.

17. Any difference arising between Network Rail and the operator under this Part of this Schedule shall be referred to and settled by arbitration under article 51 (arbitration).

PART 3

PROTECTION FOR SEWERAGE UNDERTAKERS

18.—(1) For the protection of sewerage undertakers the following provisions shall, unless otherwise agreed in writing between Network Rail 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;

“plan” includes sections and method statements;

“sewer” means a public sewer within the meaning of the Water Industry Act 1991⁽²⁾ and includes a disposal main within the meaning of that Act;

“specified works” means so much of the authorised 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

(2) 1991 c. 56.

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

(3) The provisions of Schedule 9 (provisions relating to statutory undertakers etc.) to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

19.—(1) Before commencing the construction or renewal of any specified work, or in the case of any temporary work its removal, Network Rail shall submit to the undertaker plans of the work as described in sub-paragraph (3) (in this Part of this Schedule referred to as “the plans”) and shall not commence that work until the undertaker has signified in writing its approval of the plans.

(2) Any approval of the undertaker required under this paragraph—

- (a) may be given subject to reasonable conditions;
- (b) shall not be unreasonably withheld; and
- (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.

(3) 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 Network Rail may propose to any such sewers.

(4) For the purpose of the preparation of the plans the undertaker shall permit Network Rail to have access to plans in its possession and to any of its sewers.

(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.

20.—(1) The specified work shall be constructed, or (in the case of any temporary work) removed, in accordance with the plans approved, or deemed to have been approved, under paragraph 19 or settled by arbitration, as the same may be amended from time to time by agreement between Network Rail and the undertaker, and in the construction or removal of any specified work Network Rail 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) 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 for such works, or in such supervision, shall be paid to the undertaker by Network Rail.

(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.

21.—(1) Subject to the following provisions of this Part of this Schedule, Network Rail 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

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

specified work or any investigation undertaken in respect of any specified work 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 of any new, altered or substituted sewer which may be necessary in consequence of the construction of any specified work.

(2) Network Rail 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 any specified work or of the failure or want of repair of any specified work or any subsidence caused by the construction of any specified work or in consequence of any act or omission of Network Rail, its contractors, agents, workmen or servants, whilst engaged upon any specified work and any new, altered or substituted sewer or any protective work.

(3) The undertaker shall give to Network Rail reasonable notice of any such claim or demand mentioned in sub-paragraph (2) and no settlement or compromise of the claim or demand shall be made without the agreement in writing of Network Rail.

(4) Nothing in sub-paragraph (1) or (2) shall impose any liability on Network Rail 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 Network Rail, 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 has been solely 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 Network Rail 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) shall be reduced by the amount of that excess.

(6) For the purposes of sub-paragraph (5) 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) (and having regard, where relevant, to sub-paragraph (5)) 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) shall not apply where the authorised works constitute major transport works for the purposes of Part 3 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 Network Rail and the undertaker in such proportions as may be prescribed by any such regulations.

22.—(1) An officer of the undertaker duly appointed for the purpose may, at any reasonable time and, if required by Network Rail, under its 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 Network Rail, its contractors or agents) exonerate Network Rail from any liability or affect any claim for damages by the undertaker.

23.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 16 (temporary stopping up of streets), 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, renew, protect or use any sewer which at the time of the stopping up or diversion was in that highway.

(2) Where, in consequence of this Order, any part of any street, bridleway or footpath in which any sewer is situate ceases to be part of the street, bridleway or footpath, the undertaker may exercise the same rights of access to such sewer as it enjoyed immediately before the coming into force of this Order, but nothing in this paragraph shall affect any right of Network Rail or of the undertaker to require alteration of such sewer under this Part of this Schedule.

24. Network Rail shall, so far as is reasonably practicable, so exercise the powers conferred by article 22 (protective works to buildings) as not to obstruct or render less convenient the access to any sewer.

25. As soon as reasonably practicable after the completion of the construction of any specified work Network Rail shall deliver to the undertaker a plan and section showing the position and level of that work as constructed and all new, altered or substituted works provided under this Part of this Schedule.

26. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Network Rail and the undertaker in respect of any sewer or other apparatus constructed, laid or erected in land belonging to Network Rail before the coming into force of this Order.

27. Any difference arising between Network Rail and the undertaker under this Part of this Schedule shall be referred to and settled by arbitration under article 51 (arbitration).

PART 4

FOR PROTECTION OF LONDON UNDERGROUND LIMITED

28.—(1) For the protection of the Company the following provisions shall, unless otherwise agreed in writing between Network Rail and LUL, have effect.

(2) In this Part of this Schedule—

“the Company” means—

- (a) LUL;
- (b) any subsidiary of LUL;
- (c) a PPP Company;
- (d) any wholly owned subsidiary of a PPP Company; and

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(e) any PPP related third party being treated as a PPP Company by reason of having entered into an agreement pursuant to section 215(3)(b) of the Greater London Authority Act 1999⁽³⁾;

“the Company’s works and apparatus” includes 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 the Company 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;

“construction” includes execution, demolition, placing and altering and “construct” and “constructed” shall be construed accordingly;

“designated works” means (for as long as such land continues to be identified as safeguarded land) so much of the authorised works as may be situated within 15 metres of safeguarded land or may in any way affect safeguarded land and includes the construction, reconstruction and maintenance of the authorised works;

“EMI” means electromagnetic interference with the Company’s works and apparatus generated by the operation of the authorised works (including the operation of trains using the new railways comprised in the authorised works) where such interference is of a level which affect the safe and efficient operation of the Company’s works and apparatus;

“the engineer” means an engineer to be appointed by LUL;

“LUL” means London Underground Limited;

“PPP Company” has the same meaning as section 210(5) of the Greater London Authority Act 1999;

“PPP related third party” has the same meaning as section 215(2)(b) of the Greater London Authority Act 1999;

“plans” includes sections, drawings, particulars and schedules of construction (including particulars as to the working methods and phases of the specified works) and “approved plans” means plans approved or deemed to be approved or settled by arbitration in accordance with the provisions of this Part of this Schedule;

“railway property” means any railway of LUL, and any works, apparatus and equipment of the Company connected therewith and includes any lands, premises, structures or erections held or used by the Company for the purposes of such railway or works, apparatus and equipment;

“safeguarded land” means the land within the zone specified in paragraph 2 of the safeguarding directions issued by the Secretary of State on 5th November 1990 as amended by further directions dated 10th October 1991 and 12th December 1991 pursuant to articles 14(1) and 18(3) of the Town and Country Planning General Development Order 1988⁽⁴⁾ or any revised, reissued or amended directions issued pursuant to the Town and Country Planning (General Development Procedure) Order 1995⁽⁵⁾ from time to time; and

“the specified works” means so much of the authorised works as may be situated upon, across, under, over or within 15 metres of railway property (including its operation and use) or may in any way affect railway property and includes the construction and maintenance of the authorised works and the designated works.

29. The provisions of Schedule 9 (provisions relating to statutory undertakers etc.) to this Order shall not apply to works, apparatus and equipment to which this Part of this Schedule applies.

(3) 1999 c. 29.

(4) S.I. 1988/1813.

(5) S.I. 1995/419.

30.—(1) Network Rail shall not in the exercise of the powers of this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of LUL.

(2) The consent of LUL under sub-paragraph (1) above shall not be unreasonably withheld but may be given subject to reasonable conditions.

31.—(1) Network Rail shall not under the powers of this Order, without the consent of LUL, which shall not be unreasonably withheld, acquire or enter upon, take or use, whether temporarily or permanently or acquire any new rights over any railway property.

(2) Sub-paragraph (1) shall not prevent Network Rail from acquiring the interest of any person other than the Company in the said land.

32. Network Rail shall, before commencing the construction of any part of the specified works, furnish to LUL such proper and sufficient plans relevant to the part of the specified works concerned (“the plans”) (including particulars as to the working methods and the regulation of traffic in the vicinity of those specified works) as may be reasonably required by the engineer and shall not commence those specified works until the plans have been approved in writing by the engineer or settled by arbitration under article 51 (arbitration).

33. The engineer’s approval under paragraph 32 shall not be unreasonably withheld and any question of whether it has been unreasonably withheld shall be settled by arbitration, and in any event if within 56 days after the plans have been furnished to LUL the engineer has not notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted.

34. If within 56 days after the plans have been furnished to LUL, LUL gives notice to Network Rail that LUL desires to construct any part of the specified works, which in the opinion of the engineer will or may affect the stability of railway property or the safe and effective operation of the Company’s railway undertaking or the services of operators using the same, then, if Network Rail desires such part of the specified works to be constructed, LUL shall construct it with all reasonable dispatch on behalf of, and to the reasonable satisfaction of Network Rail in accordance with the plans approved or deemed to be approved or settled as aforesaid.

35. Upon signifying his approval or disapproval 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 the construction of the specified works to ensure the stability of railway property, the continuation of the safe and effective operation of the Company’s railway undertaking or the services of operators using the same and the comfort and safety of the passengers who may be affected by the specified works, and such protective works as may be reasonably necessary for those purposes shall be constructed by LUL with all reasonable dispatch, or, if LUL so desires, such protective works shall be carried out by Network Rail at its own expense and Network Rail shall not commence the construction of the specified works until the engineer has notified Network Rail that the protective works have been completed.

36. Network Rail shall, before commencing the construction of the designated works, furnish to LUL such proper and sufficient plans thereof as may reasonably be required by the engineer and shall not commence the designated works until plans thereof have been approved in writing by the engineer or settled by arbitration under article 51 (arbitration).

37. The engineer’s approval under paragraph 36 shall not be unreasonably withheld and any question of whether it has been unreasonably withheld shall be settled by arbitration, and in any event if within 56 days after plans have been furnished to LUL the engineer has not notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved those plans as submitted.

38. Upon signifying his approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

the commencement of the construction of the designated works to safeguard the safe, economic and efficient construction, operation and maintenance of the ticket hall, ventilation shaft and running tunnels proposed to be constructed within the safeguarded land as part of the CrossRail Scheme and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail with all reasonable dispatch, at its own expense and Network Rail shall not commence the construction of the specified works until the engineer is satisfied that any protective works so constructed have been completed to the reasonable satisfaction of the engineer.

39. Network Rail shall give to the engineer not less than 56 days' notice of its intention to commence the construction of any of the specified works and also except in emergency (when it shall give such notice as may be reasonably practicable), of its intention to carry out any works for the maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with railway property.

40. The construction of the specified works, any protective works and any alterations and additions thereto carried out by Network Rail shall, when commenced, be carried out—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as aforesaid;
- (b) under the supervision (if given), and to the reasonable satisfaction of the engineer; and
- (c) in such manner as to cause—
 - (i) as little damage as may be to railway property;
 - (ii) as little interference as may be with the conduct of traffic on the railways of LUL and the use by passengers of railway property,

and, if any damage to railway property or any such interference shall be caused by the carrying out of the specified works and any protective works carried out by Network Rail, Network Rail shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to LUL all reasonable expenses to which it may be put and compensation for any loss which it may sustain by reason of any such damage or interference.

41. Nothing in paragraph 40 shall impose any liability on Network Rail with respect to any damage, cost, expense or loss which is attributable to the act, neglect or default of the Company or any person in its employ, or of its contractors or agents and any liability of Network Rail under paragraph 40 shall be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the act, neglect or default of the Company or of any person in its employ, or of its contractors or agents.

42. Network Rail shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and the construction of any protective works carried out by Network Rail pursuant to the provisions of paragraph 35 and shall supply him with all such information as he may reasonably require with regard to the specified works or any such protective works or to the method of construction thereof.

43. During the construction of any works by LUL under this Part of this Schedule LUL shall at all times afford reasonable facilities to Network Rail and its agents for access to those works, and shall supply Network Rail with such information as Network Rail may reasonably require with regard to such works or the method of construction thereof.

44. If any alterations or additions, either permanent or temporary, to railway property shall be reasonably necessary during the construction of the specified works, or during a period of 12 months after the completion thereof, in consequence of the construction of the specified works, such alterations and additions may be carried out by LUL and, if LUL gives to Network Rail reasonable notice of its intention to carry out such alterations or additions, Network Rail shall pay to LUL the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised

sum representing any increase in the costs which may be expected to be reasonably incurred by the Company in maintaining, working and, when necessary, renewing any such alterations or additions.

45. If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions referred to in paragraph 44 a capitalised sum representing such saving shall be set off against any sum payable by Network Rail to LUL under this Part of this Schedule.

46. Network Rail shall repay to LUL all reasonable costs, charges and expenses reasonably incurred by the Company—

- (a) in constructing any part of the specified works on behalf of Network Rail as provided by paragraph 34 or in constructing any protective works under the provisions of paragraph 35, including, in respect of any permanent protective works, a capitalised sum representing the cost which may be expected to be reasonably incurred by the Company in maintaining and renewing such works;
- (b) in respect of the employment or procurement of the services of any inspectors, supervisory staff, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, monitoring, 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 the specified works and to ensure the continued safe and effective operation of the Company's railway undertaking or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by the specified works) and the comfort and safety of passengers;
- (c) 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 the specified works, or from the substitution or diversion of railway services of LUL which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of the specified works; and
- (e) in respect of the approval of plans and any supervision by the engineer of the construction of the specified works and the designated works.

47. Network Rail shall in the design and construction of the authorised works take all measures necessary to prevent EMI and shall establish with LUL (both parties acting reasonably) appropriate arrangements to test and verify the effectiveness of works proposed to be constructed by Network Rail to prevent EMI.

48. If at any time after the completion of a specified work, not being a work vested in the Company, LUL gives notice to Network Rail informing it that the state of maintenance of the specified work appears to be such as may affect the safe and effective operation of railway property, Network Rail shall, on receipt of such a notice, take such steps as may be reasonably necessary to put that specified work in such state of repair as may not so affect railway property.

49. Network Rail shall be responsible for, and make good to LUL all reasonable costs, charges, damages and expenses not otherwise provided for in paragraph 46 which may be occasioned to, or reasonably incurred by, the Company—

- (a) by reason of the specified works or the failure thereof; or
- (b) by reason of any act or omission of Network Rail or of any person in its employ, or of its contractors or others whilst engaged upon the construction of the specified works;

and Network Rail shall indemnify the Company from and against all claims and demands arising out of or in connection with the construction of the specified works or any failure, act or omissions as

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

aforesaid, and the fact that any act or thing may have been done in accordance with any requirement of the engineer or under his supervision, shall not (if it was not attributable to the act, neglect or default of the Company or of any person in its employ, or of its contractors or agents) excuse Network Rail from any liability under the provisions of this Part of this Schedule.

50.—(1) Any liability of Network Rail under paragraph 49 shall be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the act, neglect or default of the Company or of any person in its employ, or of its contractors or agents.

(2) The Company shall give to Network Rail immediate notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of Network Rail.

51. Any difference arising between Network Rail and the Company under this Part of this Schedule shall be referred to and settled by arbitration under article 51 (arbitration).

PART 5

PROTECTION FOR THE PORT OF LONDON AUTHORITY

52. In this Part of this Schedule—

“the Port Authority” means the Port of London Authority;

“the 1968 Act” means the Port of London Act 1968⁽⁶⁾;

“the river” means the Thames as defined in the 1968 Act.

53.—(1) Subject to sub-paragraph (2) nothing in this Order shall affect any requirement under Part 5 of the 1968 Act to obtain a licence from the Port Authority to carry out any of the authorised works.

(2) To the extent that it would not otherwise do so the requirement to obtain a licence under section 70 of the 1968 Act shall apply to the exercise of any powers conferred by article 8 (appropriation of works near Blackfriars Bridge).

54.—(1) Subject to sub-paragraph (2) Network Rail shall not in the exercise of the powers conferred by this Order compulsorily acquire or use, or acquire any rights over, the bed of the river or any other land of the Port Authority.

(2) Sub-paragraph (1) shall not prevent Network Rail from acquiring compulsorily the interest of any person other than the Port Authority in the land referred to in sub-paragraph (1).

55. The exercise by Network Rail in, under or over the river Thames of any of the powers conferred by this Order to construct or maintain the authorised works shall be subject to any directions given by the Port Authority or its harbourmaster under section 111 or 112 of the 1968 Act and any byelaws of the Port Authority.

(6) 1968 c.xxxii.

PART 6

PROTECTION FOR LAND DRAINAGE, FLOOD DEFENCE, WATER RESOURCES AND FISHERIES

56.—(1) The following provisions shall apply for the protection of the Agency unless otherwise agreed in writing between Network Rail 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” shall be construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for a flood event with an annual probability of occurrence of 0.01 or greater 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;

“the fishery” means any waters containing fish and fish in, or migrating to or from the river Thames 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 rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer.

57.—(1) Before beginning to construct the specified works and again at the written request of the Agency following their completion, Network Rail shall at its own expense and to the reasonable satisfaction of the Agency, conduct a survey of the condition of so much of the river walls on each side of the river Thames as is situated within 100 metres of the centreline of the Blackfriars Bridge and submit a report to the Agency upon the condition of such walls.

(2) If any defects are identified in the initial survey conducted pursuant to sub-paragraph (1), being defects which may be affected by the construction of the specified works, Network Rail shall monitor the defects not less than once every 4 weeks where tides permit during the construction of the specified works in accordance with such reasonable requirements as the Agency may specify or, if the Agency reasonably requires having regard to the results of any such monitoring, at such lesser intervals as the Agency may specify.

(3) Before beginning to construct the specified works and at 2-weekly intervals thereafter until their completion or at such greater intervals as the Agency may agree for the period following the completion of foundation works comprised in the specified works, Network Rail shall at its own expense and to the reasonable satisfaction of the Agency survey the levels of the foreshore within 200 metres of the specified works and submit a report upon those levels to the Agency.

(4) The survey required under sub-paragraph (3) shall be undertaken at points corresponding to the intersection of grid lines spaced at 10 metre intervals parallel to the river walls and at 50 metre intervals at right angles to the river Thames.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(5) If during the construction of the specified works, any defects in the river walls deteriorate or scouring or siltation of the foreshore exceeds an average of 150 millimetres from the initial measurements taken on any two adjacent grid lines 50 metres apart, Network Rail shall immediately cease the construction of the specified works and not re-commence the construction otherwise than in accordance with such reasonable requirements as may be specified by the Agency which may include changes to working methods and the completion of mitigation works.

(6) If in the circumstances of any particular case it is reasonable to do so, having regard to the nature of the particular works concerned, the Agency shall at the written request of Network Rail substitute for the distances, periods or intervals specified in this paragraph, such lesser distances and such greater periods and intervals as are appropriate.

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

(2) Without prejudice to sub-paragraph (1), Network Rail shall ensure that its contractor will provide the Agency with all reasonable necessary hydraulic information in order to identify and quantify any effects of erosion and deposition on the Thames riverbed and foreshore which are likely to be caused by any such specified work (including the use of barges) and such information shall be accompanied by an appropriate assessment of likely effects (such as any consequential loss of foreshore habitat and impacts on river wall stability) and of any remedial measures which may be reasonably necessary having regard to any such likely effects.

(3) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 69.

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

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused within 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 and in the discharge of its environmental and recreational duties.

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

59. Without prejudice to the generality of paragraph 58, the requirements which the Agency may make under that paragraph include conditions requiring Network Rail 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,

by reason of any specified work.

60.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 59, shall be constructed—

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (a) within 3 years of the Agency's approval under paragraph 58 or such longer period as the Agency may consent to at the time of the approval or upon an application by Network Rail thereafter (such consent not to be unreasonably withheld);
- (b) in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (c) to the reasonable satisfaction of the Agency,

and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

(2) Without prejudice to any reasonable requirements of the Agency under paragraph 59 relating to protective works, if any specified work or protective work is not constructed within the period required under sub-paragraph (1)(a), Network Rail may submit to the Agency new plans of the work for further approval and the provisions of this Part of this Schedule shall apply accordingly.

(3) Network Rail shall give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(4) 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 Network Rail at Network Rail's own expense to comply with the requirements of this Part of this Schedule or (if Network Rail so elects and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 64, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon Network Rail, it has failed to begin taking steps to comply with the requirements of the notice and thereafter to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from Network Rail.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in emergency exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined.

61.—(1) Subject to the provisions of this Part of this Schedule and except to the extent that the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers of the Order from so doing, Network Rail shall 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 or on land held by Network Rail for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers of the Order or is already in existence.

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

(3) Subject to paragraph 64, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any work is served under sub-paragraph (2) on Network Rail, Network Rail has failed to begin taking steps to comply with the reasonable requirements of the notice and has not thereafter made reasonably expeditious progress towards their implementation, the

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from Network Rail.

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

62. Subject to paragraph 64, if by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that work is otherwise damaged, such impairment or damage shall be made good by Network Rail to the reasonable satisfaction of the Agency and if Network Rail fails to do so, the Agency may make good the same and recover from Network Rail the expense reasonably incurred by it in so doing.

63.—(1) Network Rail shall 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 Network Rail 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 64, 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, Network Rail fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from Network Rail the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 64, 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 Network Rail the reasonable cost of so doing provided that notice specifying those steps is served on Network Rail as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

64. Nothing in paragraphs 60(5), 61(3), 62, 63(3) and (4) shall authorise the Agency to execute works on or affecting an operational railway forming part of Network Rail's network without the prior consent in writing of Network Rail such consent not to be unreasonably withheld.

65. Network Rail shall 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;
- (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.

66.—(1) Without prejudice to the other provisions of this Part of this Schedule, Network Rail shall indemnify the Agency from all claims, demands, proceedings, costs, damages or expenses or loss, which may be made or taken against, or 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 Network Rail, its contractors, agents or employees whilst engaged upon the work.

(2) The Agency shall give to Network Rail reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of Network Rail which agreement shall not be unreasonably withheld.

67. The fact that any work or thing has been executed or done by Network Rail in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve Network Rail from any liability under the provisions of this Part of this Schedule.

68. For the purposes of section 5 of the Metropolis Management (Thames River Prevention of Floods) Amendment Act 1879(7) and Chapter 2 of Part 2 of the Water Resources Act 1991(8) (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this Part of this Schedule with respect to such construction shall be deemed also to constitute a licence under that Chapter to obstruct or impede the flow of inland waters at that point by means of impounding works or, as the case may be, a consent or approval under section 109.

69. Any dispute arising between Network Rail and the Agency under this Part of this Schedule shall, if the parties agree, be determined by arbitration under article 51 (arbitration), but shall otherwise 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 Network Rail or the Agency, after notice in writing by one to the other.

(7) 1879 c.cxcviii.

(8) 1991 c. 57.