

## SCHEDULES

### SCHEDULE 1

Article 5

#### SCHEDULED WORKS

In the London Borough of Tower Hamlets—

A railway (517 metres in length) being a diversion of the Bank to Canary Wharf Railway being carried on viaduct commencing by a junction with that railway above a point 35 metres east of the junction of West India Dock Road with Hertsmere Road and terminating by a junction with the Poplar to Canary Wharf Railway at Canary Wharf Station, including the demolition of part of the existing railway viaduct carrying the Poplar to Canary Wharf Railway and the modification of existing track layout.

### SCHEDULE 2

Articles 5 and 20

#### ADDITIONAL LAND WHICH MAY BE ACQUIRED OR USED

| <i>(1)</i><br><i>Location</i>    | <i>(2)</i><br><i>Number of land shown on the deposited plans</i>   | <i>(3)</i><br><i>Purpose for which land may be acquired or used</i> |
|----------------------------------|--|---|
| London Borough of Newham         |  |   |
| <i>Pudding Mill Lane Station</i> | 100  | Station works   |
| <i>Land at Seagull Lane</i>      | 700, 701, 702  | Permanent rights of access  |
| <i>Custom House Station</i>      | 800, 823   | Permanent rights of access  |
|                                  | 801, 802, 803, 806, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822                               | Station works and permanent rights of access                        |
| <i>Prince Regent Station</i>     | 919  | Permanent rights of access  |
|                                  | 903, 904, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 918  | Station works   |
| <i>Royal Albert Station</i>      | 1000, 1001, 1002, 1003, 1004, 1005, 1006, 1007, 1013, 1016, 1017, 1018, 1019, 1020, 1021, 1022, 1023, 1024, 1026, 1027 | Station works   |
| <i>Gallions Reach Station</i>    | 1202, 1205, 1206, 1207, 1208, 1209, 1210, 1211, 1212, 1213, 1214   | Station works   |
| <i>Beckton Station</i>           | 1301   | Station works   |

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| <i>(1)</i><br><i>Location</i>   | <i>(2)</i><br><i>Number of land shown on the deposited plans</i>  | <i>(3)</i><br><i>Purpose for which land may be acquired or used</i>                 |
|---------------------------------|---|---|
| London Borough of Tower Hamlets |   |   |
| <i>Bow Church Station</i>       | 204, 205, 208, 210  | Station works   |
| <i>Devons Road Station</i>      | 311   | Station works   |
| <i>All Saints Station</i>       | 407, 408, 409   | Station works and permanent rights of pedestrian access                             |
| <i>Blackwall Station</i>        | 506, 507, 508, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 523, 525, 526, 527, 528, 529, 530, 531, 532, 533 | Station works   |
| <i>East India Station</i>       | 606, 607, 608, 609, 610, 611, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 629, 630, 631, 632, 633                | Station works and permanent rights of access  |
| <i>West India Quay Station</i>  | 1406, 1407, 1408  | Permanent rights over land, relocation of utility apparatus and construction access |

## SCHEDULE 3

Article 8

## STREETS SUBJECT TO STREET WORKS

| <i>(1)</i><br><i>Area</i>       | <i>(2)</i><br><i>Street subject to street works</i> |
|---------------------------------|---|
| London Borough of Newham        | Armada Way  |
|                                 | Dockside Road                                       |
|                                 | Barbers Road  |
|                                 | Sandstone Lane                                      |
|                                 | Stonewall   |
|                                 | Victoria Dock Road                                  |
| London Borough of Tower Hamlets | Aspen Way   |
|                                 | Bow Road  |
|                                 | Bromley High Street                                 |
|                                 | Devons Road   |

| <i>(1)</i><br><i>Area</i> | <i>(2)</i><br><i>Street subject to street works</i> |
|---------------------------|---|
|                           | Ditchburn Street                                    |
|                           | Hertsmere Road                                      |
|                           | Lawless Street                                      |
|                           | Poplar Bath Street                                  |
|                           | Poplar High Street                                  |
|                           | Prestage Way  |
|                           | Preston's Road                                      |
|                           | Rainhill Way  |
|                           | St. Andrews Way                                     |
|                           | Upper Bank Street                                   |
|                           | West India Dock Road                                |

SCHEDULE 4

Article 10

STREETS TO BE TEMPORARILY STOPPED UP

| <i>(1)</i><br><i>Area</i>       | <i>(2)</i><br><i>Street to be temporarily stopped up</i>  |
|---------------------------------|---|
| London Borough of Newham        | Armada Way<br>Barbers Road<br>Dockside Road<br>Footbridge over Seagull Lane/Sandstone Lane<br>Footpath between Woolwich Manor Way and Stonewall between points T3 and T6<br>Sandstone Lane<br>Stonewall<br>Victoria Dock Road |
| London Borough of Tower Hamlets | Aspen Way<br>Aspen Way Slip Road at Blackwall Station   |

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| <i>(1)</i><br><i>Area</i> | <i>(2)</i><br><i>Street to be temporarily stopped up</i>               |
|---------------------------|--|
|                           | Aspen Way Slip Road at East India Station                              |
|                           | Blackwall Way  |
|                           | Bow Road   |
|                           | Bromley High Street  |
|                           | Devons Road  |
|                           | Ditchburn Street   |
|                           | East India Dock Road   |
|                           | East India Dock Road Tunnel  |
|                           | Footpath between Hertsmere Road and Aspen Way between points T1 and T2 |
|                           | Hertsmere Road   |
|                           | Lawless Street   |
|                           | Poplar Bath Street   |
|                           | Poplar High Street   |
|                           | Prestage Way   |
|                           | Preston's Road   |
|                           | Rainhill Way   |
|                           | St. Andrews Way  |
|                           | Upper Bank Street  |
|                           | West India Dock Road   |

SCHEDULE 5

Article 11

ACCESS TO WORKS

| <i>(1)</i><br><i>Area</i>       | <i>(2)</i><br><i>Description of access</i> |
|---------------------------------|--|
| London Borough of Tower Hamlets | Aspen Way                                  |
|                                 | Ditchburn Street                           |

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| (1)<br>Area              | (2)<br>Description of access |
|--------------------------|------------------------------|
| London Borough of Newham | Rainhill Way                 |
|                          | St. Andrews Way              |
|                          | Armada Way                   |
|                          | Barbers Road                 |
|                          | Dockside Road                |
|                          | Sandstone Lane               |
|                          | Stonewall                    |
|                          | Victoria Dock Road           |

SCHEDULE 6

Article 23

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 and in the case of the imposition of a restrictive covenant, 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, the Land Compensation Act 1973(1) shall have effect subject to the modifications set out in sub-paragraphs (2) and (3).

(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—

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

(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—

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

(1) 1973 c. 26.

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- (c) for the words “part proposed” there shall be substituted the words “right or restrictive covenant proposed”; and
- (d) for the words “part is” there shall be substituted the words “right or restrictive covenant is”.

#### *Application 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, or to the imposition under this Order of a restrictive covenant, as it applies to the compulsory acquisition under this Order of land, so that, in appropriate contexts, references in that Act to land are read (according to the requirements of the particular context) as referring to, or as including references to—

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

(2) Without prejudice to the generality of sub-paragraph (1), Part 1 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, or in relation to the imposition of a restrictive covenant, with the modifications specified in the following provisions of this Schedule.

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

“7. In assessing the compensation to be paid by the acquiring authority under this Act, regard shall be had not only to the extent (if any) to which the value of the land over which the right is to be acquired or the restrictive covenant is to be imposed is depreciated by the acquisition of the right or the imposition of the restrictive covenant 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 (provisions as to divided land) there shall be substituted the following section—

(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, or a restrictive covenant affecting, 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 or the imposition of the restrictive covenant 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 or the restrictive covenant imposed without material detriment to that land; or
  - (ii) where that land consists of such a park or garden, that the right cannot be purchased or the restrictive covenant imposed without seriously affecting the amenity or convenience of the house to which that land belongs,

the Docklands Light Railway (Capacity Enhancement and 2012 Games Preparation) Order 2007(2) (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right or the imposition of a restrictive covenant 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 6 weeks beginning with the date of the determination, withdraw the notice to treat in consequence of which the determination was made; but nothing in this subsection prejudices any other power of the authority to withdraw the notice.”.

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

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

shall be so modified as to secure that, as against persons with interests in the land which are expressed to be overridden by the deed, the right which is to be compulsorily acquired or the restrictive covenant which is to be imposed 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 has served notice to treat in respect of any right or restrictive covenant, it has power, exercisable in the like circumstances and subject to the like conditions, to enter for the purpose of exercising that right or enforcing that restrictive covenant (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 or the enforcement of the restrictive covenant 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 or to enforce the restrictive covenant imposed, subject to compliance with that section as respects compensation.

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## SCHEDULE 7

Article 26

## LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

| <i>(1)</i><br><i>Area</i>        | <i>(2)</i><br><i>Number of land shown on the deposited plans</i>                          | <i>(3)</i><br><i>Purpose for which temporary possession may be taken</i> | <i>(4)</i><br><i>Authorised work</i> |
|----------------------------------|---|--|--------------------------------------|
| London Borough of Newham         |   |  |                                      |
| <i>Pudding Mill Lane Station</i> | 101, 102, 103, 104, 105   | Construction works and access  | Station works                        |
|                                  | 107   | Provision of temporary car parking                                       | Station works                        |
| <i>Custom House Station</i>      | 804, 807, 808   | Construction works and access  | Station works                        |
| <i>Prince Regent Station</i>     | 900, 902, 905, 916, 917   | Construction works and access  | Station works                        |
| <i>Royal Albert Station</i>      | 1008, 1009, 1010, 1011, 1012, 1014, 1015  | Construction works and access  | Station works                        |
| <i>Beckton Park Station</i>      | 1100, 1101  | Construction works and access  | Station works                        |
| <i>Gallions Reach Station</i>    | 1201, 1203, 1204, 1215  | Construction works and access  | Station works                        |
| <i>Beckton Station</i>           | 1300, 1302, 1303, 1304, 1305  | Construction works and access  | Station works                        |
| London Borough of Tower Hamlets  |   |  |                                      |
| <i>Bow Church Station</i>        | 203, 206, 207, 209, 211, 212  | Construction works and access  | Station works                        |
| <i>Devons Road Station</i>       | 300, 302, 303, 304, 305, 306, 307, 310, 313, 314  | Construction works and access  | Station works                        |
| <i>All Saints Station</i>        | 405, 406  | Construction works and access  | Station works                        |
| <i>Blackwall Station</i>         | 504, 522, 524   | Construction works and access  | Station works                        |
| <i>East India Station</i>        | 602, 605, 612, 613, 614, 615, 616, 628  | Construction works and access  | Station works                        |
| <i>West India Quay Station</i>   | 1400, 1402, 1409, 1410, 1411, 1412, 1415, 1416, 1417, 1418, 1421, 1422, 1424, 1426, 1427, | Construction works and access  | Scheduled works                      |



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| (1)<br>Area | (2)<br>Number of land<br>shown on the<br>deposited plans  | (3)<br>Purpose for which<br>temporary possession<br>may be taken | (4)<br>Authorised work |
|-------------|---|--|------------------------|
|             | 1434, 1435, 1436,<br>1437, 1438, 1439,<br>1440, 1442, 1445,<br>1446, 1447, 1448,<br>1449, 1450, 1451,<br>1452, 1453, 1454,<br>1455, 1456, 1457,<br>1458, 1459, 1460,<br>1461, 1462, 1477,<br>1480, 1481, 1482 |  |                        |

## SCHEDULE 8

Article 33

## PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

*Apparatus of statutory undertakers, etc., on land acquired*

1.—(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 DLRL 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 sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), 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 DLRL compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) 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 sub-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 DLRL compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which paragraph 2 or Part 3 of the 1991 Act applies.

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*Apparatus of statutory undertakers, etc., in stopped up streets*

2.—(1) Where a street is stopped up under article 9 (stopping up of streets and extinguishment of rights), any statutory utility whose apparatus is under, in, upon, over, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) DLRL shall give not less than 28 days' notice in writing of its intention to stop up any street under article 9 (stopping up of streets and extinguishment of rights) to any statutory utility whose apparatus is under, in, upon, over, along or across that street.

(3) Where notice under sub-paragraph (2) has been given, any statutory utility whose apparatus is under, in, upon, over, along or across the street may, where reasonably necessary for the efficient operation of the undertaking of the statutory utility, and if reasonably requested so to do by DLRL, shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in such position as aforesaid.

(4) Subject to the following provisions of this paragraph, DLRL shall pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

- (a) the execution of relocation works required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered necessary by the execution of relocation works.

(5) If in the course of the execution of relocation works under sub-paragraph (3)—

- (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 DLRL, or, in default of agreement, is not determined by arbitration to be necessary in consequence of the construction of the relocation works, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory utility by virtue of sub-paragraph (4) shall be reduced by the amount of that excess.

(6) For the purposes of sub-paragraph (5)—

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

(7) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (4) (and having regard, where relevant, to sub-paragraph (5)) 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 statutory utility 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 as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June, 1992, as revised and re-issued from time to time.

(8) Sub-paragraphs (4) to (7) shall not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works 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 DLRL and the statutory utility in such proportions as may be prescribed by any such regulations.

(9) The temporary stopping up, alteration or diversion of any highway under article 10 (temporary stopping up of streets) shall not affect any right of a public communications provider in respect of any apparatus which at the time of the stopping up or diversion is in the highway.

(10) In this paragraph—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means works executed, or apparatus provided, under sub-paragraph (3); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider.

#### *Railway and navigation undertakings*

3.—(1) Subject to the following provisions of this paragraph, the powers under article 8 (power to execute street works) to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act)—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority, or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Sub-paragraph (1) shall not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purposes of sub-paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.

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## SCHEDULE 9

Article 34

## FOR PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

1. The following provisions of this Schedule shall, unless otherwise agreed in writing between DLRL and Network Rail Infrastructure Limited, have effect.

2. In this Schedule—

“c2c” means c2c Rail Limited (Company Registration Number 02938993) and includes its successor in title from time to time;

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” shall be construed accordingly;

“the engineer” means an engineer appointed by Network Rail Infrastructure Limited for the purposes of this Order;

“EWS” means English Welsh and Scottish Railway Limited (Company Registration Number 02938988) and includes its successor in title from time to time;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail (then called Railtrack PLC) by the Secretary of State in exercise of his powers under section 8 of the 1993 Act;

“Network Rail” means Network Rail Infrastructure Limited and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 736 of the Companies Act 1985<sup>(3)</sup>) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“One” means London Eastern Railway Limited (Company Registration Number 04955356) and includes its successor in title from time to time;

“plans” includes sections, designs, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the 1993 Act) or station lease;

“railway property” means any railway belonging to Network Rail Infrastructure Limited and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail Infrastructure Limited and directly related to any such railway; and
- (b) any easement or other property interest held by or for the benefit of Network Rail and directly related to any such railway;

“relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail’s railway network as a result of the construction or failure of a specified work or any such act or omission as mentioned in paragraph 14(1);

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property; and

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

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(3) 1985 c. 6.

3.—(1) Subject to sub-paragraph (5), DLRL shall not, in the exercise of the powers conferred by this Order, without the consent of Network Rail Infrastructure Limited, acquire or enter upon, take or use, or acquire any new rights over, whether temporarily or permanently, any railway property.

(2) DLRL shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 8 to this Order, in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail Infrastructure Limited.

(3) DLRL shall not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail Infrastructure Limited.

(4) Where Network Rail Infrastructure Limited is asked to give its consent pursuant to sub-paragraph (1), (2) or (3), such consent shall—

- (a) not be unreasonably withheld or delayed but may be given subject to reasonable conditions; and
- (b) be subject to compliance by Network Rail Infrastructure Limited with any relevant railway operational procedures.

(5) Nothing in this paragraph shall prevent DLRL pursuant to article 20 (power to acquire land) from acquiring the interest of any person other than Network Rail Infrastructure Limited in railway property.

4.—(1) Subject to paragraph 10(5), DLRL shall before commencing construction of any specified work supply to Network Rail Infrastructure Limited proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be constructed except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail Infrastructure Limited the engineer has not intimated his approval or disapproval of those plans and the grounds of his disapproval, DLRL may serve upon the engineer written notice requiring the engineer to intimate his approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from DLRL. If by the end of the further period of 28 days the engineer has not intimated his approval or disapproval, he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which the plans were served upon the engineer under sub-paragraph (1) Network Rail Infrastructure Limited gives notice to DLRL that Network Rail Infrastructure Limited desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail Infrastructure Limited then, if DLRL desires such part of the specified work to be constructed, Network Rail Infrastructure Limited shall construct it (together with any adjoining part of the specified work which DLRL reasonably requires to be constructed in one operation with that work) with all reasonable dispatch on behalf of and to the reasonable satisfaction of DLRL in accordance with the plans approved or deemed to be approved or settled under this paragraph and under the supervision (where appropriate and if given) of DLRL.

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

(5) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the

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commencement of construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail Infrastructure Limited or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work), and such protective works as may be reasonably necessary for those purposes shall be constructed by Network Rail Infrastructure Limited or by DLRL, if Network Rail Infrastructure Limited so desires, with all reasonable dispatch and DLRL shall not commence the construction of the specified work until the engineer has notified DLRL that the protective works have been completed to his reasonable satisfaction.

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

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 4;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable and consistent with the efficient and economic construction and operation of the specified work, so as not to interfere with or obstruct the free, uninterrupted and safe use of the railways of Network Rail Infrastructure Limited or the traffic thereon and the use by passengers of railway property,

and, if any damage to railway property or any such interference or obstruction is caused or takes place in consequence of the construction of a specified work, DLRL shall, notwithstanding any approval described in paragraph 5(1)(a), make good such damage and shall pay to Network Rail Infrastructure Limited all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

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

**6.** DLRL shall—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as he may reasonably require with regard to a specified work or the method of constructing it.

**7.** Network Rail Infrastructure Limited shall at all times afford reasonable facilities to DLRL and its agents for access to any works carried out by Network Rail Infrastructure Limited under this Schedule during their construction and shall supply DLRL with such information as it may reasonably require with regard to such works or the method of constructing them.

**8.—(1)** If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of a specified work, or during a period of 12 months after the commencement of regular revenue-earning train operations using the new railways comprised in any specified work, in consequence of the construction of a specified work, and Network Rail Infrastructure Limited gives to DLRL reasonable notice of its intention specifying the alterations or additions to be carried out, DLRL shall pay to Network Rail Infrastructure Limited the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail Infrastructure Limited in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by DLRL to Network Rail Infrastructure Limited under this paragraph.

9. DLRL shall repay to Network Rail Infrastructure Limited all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail Infrastructure Limited—

- (a) in constructing any part of a specified work on behalf of DLRL as provided by paragraph 4(3) or in constructing any protective works under the provisions of paragraph 4(5) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works; and
- (b) in respect of the approval by the engineer of plans submitted by DLRL and the supervision by him of the construction of a specified work.

10.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail’s apparatus generated by the operation of the authorised works where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised works) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 4(1) for the relevant part of the authorised works giving rise to EMI (unless DLRL has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), DLRL shall in the design and construction of the authorised works take all measures necessary to prevent EMI and shall establish with Network Rail Infrastructure Limited (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

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

- (a) DLRL shall consult with Network Rail Infrastructure Limited as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and thereafter shall continue to consult with Network Rail Infrastructure Limited (both before and after formal submission of plans under paragraph 4(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail Infrastructure Limited shall make available to DLRL all information in Network Rail Infrastructure Limited’s possession reasonably requested by DLRL in respect of Network Rail’s apparatus identified pursuant to sub-paragraph (a); and
- (c) Network Rail Infrastructure Limited shall allow DLRL reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail Infrastructure Limited shall not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution shall be selected in the reasonable discretion of Network Rail Infrastructure Limited, and in relation to such modifications paragraph 4(1) shall have effect subject to this sub-paragraph.

(6) If at any time prior to the commencement of regular revenue-earning train operations on the new railways comprised in the authorised works and notwithstanding any measures adopted

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pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then DLRL shall immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) DLRL's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

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

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

- (a) Network Rail Infrastructure Limited shall allow DLRL reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by DLRL in accordance with paragraph 5.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 14(1) shall apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 9(a) any modifications to Network Rail's apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(11) In relation to any dispute arising under this paragraph the reference in article 47 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

**11.** If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail Infrastructure Limited gives notice to DLRL informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of railway property, DLRL shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect the operation of railway property.

**12.** DLRL shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail Infrastructure Limited unless it shall have first consulted Network Rail Infrastructure Limited and it shall comply with Network Rail Infrastructure Limited's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on any such railway.

**13.** Any additional expenses which Network Rail Infrastructure Limited may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous



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

**14.**—(1) DLRL shall pay to Network Rail Infrastructure Limited all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by Network Rail Infrastructure Limited—

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

and DLRL shall indemnify Network Rail Infrastructure Limited from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission; and the fact that any act or thing may have been done by Network Rail Infrastructure Limited on behalf of DLRL or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail Infrastructure Limited or of any person in its employ or of its contractors or agents) excuse DLRL from any liability under the provisions of this sub-paragraph.

(2) Network Rail Infrastructure Limited shall give DLRL reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of DLRL.

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

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

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

**15.** Network Rail Infrastructure Limited shall, on receipt of a request from DLRL, from time to time provide DLRL free of charge with written estimates of the costs, charges, expenses and other liabilities for which DLRL is or will become liable under this Schedule (including the amount of the relevant costs mentioned in paragraph 14 and with such information as may reasonably enable DLRL to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Schedule (including any claim relating to those relevant costs)).

**16.** In the assessment of any sums payable to Network Rail under this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by, or any agreement entered into by, Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by DLRL under this Schedule or increasing the sums so payable.

**17.** DLRL and Network Rail Infrastructure Limited may, subject in the case of Network Rail Infrastructure Limited to compliance with the terms of its network licence, enter into and carry into effect agreements for the transfer to DLRL of—

- (a) any railway property shown on the deposited plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and
- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property.

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**18.** In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail, c2c, One and EWS shall—

- (a) co-operate with DLRL with a view to avoiding delay and securing conformity as between any plans approved by the engineer and any requirements resulting from those procedures; and
- (b) use best endeavours to avoid any conflict arising between the application of railway operational procedures and the proper implementation of the authorised works pursuant to this Order.

## SCHEDULE 10

Article 35

### FOR PROTECTION OF LOCAL HIGHWAY AUTHORITIES

**1.** The following provisions of this Schedule shall, unless otherwise agreed in writing between DLRL and the appropriate Council, have effect.

**2.** In this Schedule—

“the appropriate Council” means—

- (i) the Council of the London Borough of Tower Hamlets, in relation to any authorised work constructed in the area of that Council; or
- (ii) the Council of the London Borough of Newham, in relation to any authorised work constructed in the area of that Council.

“highway” means a street vested in or maintainable by the appropriate Council; and

“highway operations” means the construction of any part of the authorised works which will involve interference with a highway or the traffic in a highway and any temporary stopping up, alteration or diversion of a highway.

**3.** Before commencing to construct any scheduled work DLRL shall consult the appropriate Council about—

- (a) the programme for the construction of that work so as to secure, so far as may be reasonably practicable, that the duration of any disturbance occasioned by, or in connection with, such construction shall be reduced to a minimum; and
- (b) the land within the Order limits to be occupied and used by DLRL as temporary working sites for the purpose of such construction, the period for which and the manner in which each site shall be used, and the steps to be taken by DLRL in order to mitigate any injury to amenity.

**4.** DLRL shall consult the appropriate Council as to—

- (a) the routes in the appropriate Council’s area proposed to be used by vehicles, machinery and plant, passing to or from any works under construction; and
- (b) the proposed manner and method of disposing of any soil or waste material resulting from the carrying out of any operation in connection with the authorised works,

and such soil or waste material shall not be disposed of by DLRL in the appropriate Council’s area in any manner as shall be objected to in writing by the appropriate Council.

**5.** Before commencing to construct any authorised work which will involve highway operations, DLRL shall consult the appropriate Council as to the time when that work will be commenced, as to the extent of the surface of the highway which it may be reasonably necessary for DLRL to occupy

in the construction of that work, and as to the conditions under which that work shall be constructed so as not to cause so far as possible inconvenience to the public and to ensure the safety of the public.

6. Any such highway shall be reinstated by DLRL in a manner reasonably approved by the appropriate Council and to its reasonable satisfaction.

7. DLRL shall not, except with the consent of the appropriate Council, deposit any soil, subsoil or materials or stand any vehicle or plant on any highway (except on so much thereof as is for the time being temporarily stopped up or occupied under the powers of this Order) so as to obstruct the use of such highway by any person or, except with the like consent, deposit any soil, subsoil or materials on any highway except within a hoarding.

8. Except in an emergency or where reasonably necessary to secure the safety of the public, no direction or instruction shall be given by the appropriate Council to the contractors, servants or agents of DLRL regarding any highway operations without the prior consent in writing of DLRL; but the appropriate Council shall not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions pursuant to this paragraph.

9. DLRL shall, if reasonably so required by the appropriate Council, provide and maintain during such time as DLRL may occupy any part of a highway for the purpose of the construction of any part of the authorised works, temporary ramps for vehicular traffic or pedestrian traffic, or both, and any other traffic measures required to protect the safety of road users in accordance with the standard recommended in Chapter 8 of the Traffic Signs Manual issued for the purposes of the Traffic Signs Regulations and General Directions 1994(4) in such position as may be necessary to prevent undue interference with the flow of traffic in any highway.

10. DLRL shall indemnify the appropriate Council against any claim which may arise as a result of any subsidence of, or damage to, any highway or any retained sanitary convenience, refuge, sewer, drain, lamp column, traffic sign, bollard, bin for refuse or road materials or apparatus connected therewith or any other property or work belonging to, or under the jurisdiction or control of, the appropriate Council on or under any highway, or maintainable by them, which may be caused by, or in consequence of, any act or default of DLRL, its contractors, servants or agents but the appropriate Council shall give to DLRL reasonable notice of any such claim and no settlement or compromise of it shall be made without DLRL's prior consent.

11. Wherever in this Schedule provision is made with respect to the approval or consent of the appropriate Council, that approval or consent shall be in writing and may be given subject to such reasonable terms and conditions as the appropriate Council may require in the interests of safety and in order to minimise inconvenience to persons using the highway, but shall not be unreasonably withheld.

12. Any difference arising between DLRL and the appropriate Council under this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration in accordance with article 47 (arbitration).

## SCHEDULE 11

Article 36

### FOR PROTECTION OF THE ENVIRONMENT AGENCY

1. The following provisions of this Schedule shall, unless otherwise agreed in writing between DLRL and the Environment Agency (in this Schedule referred to as "the Agency"), have effect.

2. In this Schedule—

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(4) S.I. 1994/1519.

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“construction” includes execution, placing, altering, replacing, relaying and, in relation to temporary works, removal; and “construct” and “constructed” shall be construed accordingly; “damage” includes scouring, erosion and environmental damage and “damaged” shall be construed accordingly;

“drainage work” means any watercourse and includes any land used for providing flood storage capacity for any watercourse and any bank, wall, embankment or other structure or appliance constructed or used for defence against water or for the drainage of land;

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

“specified work” means so much of any work or operation authorised by this Order (other than works required in an emergency) 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 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; or
- (c) affect the conservation, distribution or use of water resources; and

“watercourse” has the same meaning as in the Land Drainage Act 1991(5).

**3.—(1)** Before beginning to construct any specified work, DLRL shall submit to the Agency plans of the work and such further particulars available to it as the Agency may reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or settled in accordance with paragraph 10 and, where applicable, in accordance with any conditions or requirements specified under sub-paragraph (3).

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

- (a) shall not be unreasonably withheld or delayed;
- (b) shall be deemed to have been given if it is neither given nor refused within 2 months of the submission of plans for approval in writing 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 conditions or requirements as the Agency may impose—
  - (i) for the protection of any drainage work or water resources,
  - (ii) for the prevention of flooding or water pollution, or
  - (iii) in the discharge of its environmental and recreational duties.

**4.** Without prejudice to the generality of paragraph 3, the conditions or requirements which the Agency may impose under that paragraph include conditions requiring DLRL 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 flood banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or 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.

**5.—(1)** Any specified work, and all protective works required by the Agency under paragraph 4, shall be constructed to the reasonable satisfaction of the Agency and the Agency shall be entitled by its officer to watch and inspect the construction of such works.

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(5) 1991 c. 59.

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

(3) If any part of the specified works comprising a structure in, over or under a watercourse or within 16 metres of a drainage work is constructed otherwise than in accordance with the requirements of this Schedule, the Agency may by notice in writing require DLRL, at DLRL's own expense, to comply with the requirements of this Schedule or (if DLRL 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.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when notice under sub-paragraph (3) is served upon DLRL, DLRL 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 DLRL.

(5) In the event of any dispute as to whether sub-paragraph (3) is applicable to any work in respect of which a notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency shall not except in an emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been determined.

6. 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 DLRL to the reasonable satisfaction of the Agency and, if DLRL fails to do so, the Agency may make good the same and recover from DLRL the expense reasonably incurred by it in so doing.

7. DLRL 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 and reports under this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Schedule.

8.—(1) Without prejudice to the other provisions of this Schedule, DLRL 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 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 raising of the water table in land adjoining the authorised works or any sewers or watercourses;
- (c) any flooding or increased flooding of any such lands; or
- (d) inadequate water quality in any watercourse or other surface waters or in groundwater,

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

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

9.—(1) The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any

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directions or award by an arbitrator, shall not relieve DLRL from any liability under the provisions of this Schedule.

(2) Sub-paragraph (1) shall not apply to the extent that such liability arises from a failure by the Agency properly to perform its functions.

**10.** Any difference arising between DLRL and the Agency under this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration in accordance with article 47 (arbitration).

## SCHEDULE 12

Article 37

### FOR PROTECTION OF SPECIFIED UNDERTAKERS

#### *Interpretation*

**1.** In this Schedule—

“apparatus” means—

- (a) in the case of a specified undertaker which is an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989<sup>(6)</sup>) belonging to, or maintained by, that undertaker;
- (b) in the case of a specified undertaker which is a gas undertaker, mains, pipes, pressure governors, ventilators or other apparatus belonging to, or maintained by, a gas transporter for the purposes of the transportation and storage of gas;
- (c) in the case of a specified undertaker which is a water undertaker—
  - (i) mains, pipes or other apparatus belonging to, or maintained by, the undertaker for the purposes of water supply; and
  - (ii) any water main or service pipe (or part of it) that is subject to an agreement to adopt made under section 51A of the Water Industry Act 1991<sup>(7)</sup>; and
- (d) in the case of a specified undertaker which is a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

and includes any structure for the lodging therein of apparatus or for giving access to such apparatus;

“construction” includes execution, placing, altering, replacing, relaying and removal and, in its application to works which include or comprise any operation, means the carrying out of that operation;

“emergency works” has the same meaning as in section 52 of the 1991 Act;

“in”, in a context referring to apparatus in land, includes under, over, across, along or upon land;

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<sup>(6)</sup> 1989 c. 29.

<sup>(7)</sup> 1991 c. 56.

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“necessary alternative apparatus” means alternative apparatus adequate to enable a specified undertaker to fulfil its statutory or licensed functions in a manner no less efficient than previously;

“plans” includes sections, specifications and method statements;

“specified undertaker” means—

- (a) EDF Energy plc whose registered office is situated at 40 Grosvenor Place, Victoria, London SW1X 7EN;
- (b) National Grid Gas Plc, whose registered office is 1–3 Strand, London WC2N 5EH; and
- (c) Thames Water Utilities Limited whose registered office is situated at Clearwater House, Vastern Road, Reading RG1 8DB,

or any person succeeding any such company as a licence holder within the meaning of Part 1 of the Electricity Act 1989, as a gas transporter within the meaning of Part 1 of the Gas Act 1986<sup>(8)</sup>, as a water undertaker within the meaning of the Water Industry Act 1991 or as a sewerage undertaker within the meaning of Part 1 of that Act, and “the specified undertaker” in relation to any apparatus means the specified undertaker to whom the apparatus belongs or by whom it is maintained; and

“specified work” means any of the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of, or may in any way adversely affect, any apparatus; or
  - (b) wherever situated, imposes any load upon any sewer,
- the removal of which has not been required under paragraph 8.

#### *Application of Schedule 8*

2. Paragraphs 1(1) and 2 of Schedule 8 shall not apply in relation to a specified undertaker and paragraphs 1(3) and 1(4) of that Schedule shall have effect as if they referred to apparatus removed under this Schedule.

#### *Apparatus in stopped up streets*

3. Where any street is stopped up under article 9 (stopping up of streets and extinguishment of rights), any specified undertaker whose apparatus is in the street shall have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up, but nothing in this paragraph shall affect any right of DLRL or of the specified undertaker to require the removal of that apparatus under paragraph 8 or the power of DLRL to carry out works under paragraphs 19 to 28.

4. DLRL shall give not less than 28 days' notice in writing of its intention to stop up any street under article 9 (stopping up of streets and extinguishment of rights) to any specified undertaker whose apparatus is in that street.

#### *On-street apparatus*

5. This Schedule shall not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between DLRL and the specified undertaker are regulated by the provisions of Part 3 of the 1991 Act.

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(8) 1986 c. 44 as amended by the Utilities Act 2000 (c. 27), section 76.

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### *Acquisition of land*

6. DLRL shall not acquire any apparatus from a specified undertaker pursuant to this Order otherwise than by agreement.

7. DLRL may in exercise of the powers conferred by this Order acquire or appropriate any land in which any apparatus is placed and, following the removal of such apparatus in accordance with the provisions of this Schedule, any rights in that land relating to that apparatus shall be extinguished but no apparatus shall be removed nor shall any right of the specified undertaker to use, maintain or renew any apparatus be extinguished until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the specified undertaker.

### *Removal of apparatus*

8. Paragraphs 9 to 11 apply where—

- (a) DLRL requires the removal of any apparatus for the purpose of constructing any of the authorised works and gives to the specified undertaker not less than 56 days' written notice of that requirement together with a plan of the proposed work and of the proposed position of the alternative apparatus to be provided or constructed; or
- (b) in consequence of the exercise or proposed exercise of any of the powers of this Order, the specified undertaker reasonably requires to remove any apparatus.

9. DLRL shall, if it is practicable to do so, afford to the specified undertaker the necessary rights and facilities for the construction of any necessary alternative apparatus in other land which is available for the purpose and which is held or used, or intended for use, by DLRL for the purpose of its undertaking or in which it has sufficient rights or interests and thereafter for the use, maintenance, repair, renewal and inspection of such apparatus and, if DLRL is unable to obtain those rights and facilities, the specified undertaker shall, on receipt of a written notice to that effect from DLRL, use its best endeavours to obtain the necessary rights and facilities.

10. Any alternative apparatus to be constructed by the specified undertaker pursuant to paragraph 9 shall be constructed in such manner, and in such line or situation, as may be agreed between the specified undertaker and DLRL or, in default of agreement, determined by arbitration.

11. The specified undertaker shall, after the manner of construction and the line or situation of any necessary alternative apparatus have been agreed or determined and after the grant to or obtaining by the specified undertaker of any such facilities and rights as are referred to in paragraph 9, proceed with all reasonable despatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by DLRL to be removed in accordance with paragraph 8.

### *Removal of apparatus and construction of alternative apparatus by DLRL*

12. Paragraphs 13 to 15 apply to so much of the work necessary in connection with the construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land held or used, or intended for use, by DLRL for the purpose of its undertaking.

13. If DLRL gives notice in writing to the specified undertaker that it desires to carry out any part of any work to which this paragraph applies, such work, instead of being carried out by the specified undertaker, may be carried out by DLRL with the prior written consent of the specified undertaker (which shall not be unreasonably withheld and shall be subject to any such conditions as are reasonable and proper to protect the apparatus) in accordance with plans and in a position agreed between the specified undertaker and DLRL or, in default of agreement, determined by arbitration, with all reasonable despatch under the superintendence (if given) and to the reasonable satisfaction of the specified undertaker.



**14.** In carrying out any work under paragraph 13 DLRL shall comply with all statutory obligations which would have been applicable had the works been carried out by the specified undertaker.

**15.** Nothing in paragraph 13 shall authorise DLRL to carry out the actual placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or, where the apparatus is laid in a trench, execute any filling around the apparatus within 300 millimetres (measured in any direction) of the apparatus.

*Facilities and rights for alternative apparatus*

**16.** Where, in accordance with the provisions of this Schedule, DLRL affords to the specified undertaker facilities and rights for the construction, use, maintenance, renewal and inspection in land of DLRL 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 DLRL and the specified undertaker or, in default of agreement, determined by arbitration.

**17.** In determining the terms and conditions mentioned in paragraph 16 in respect of alternative apparatus to be constructed across, under or along the authorised works the arbitrator shall—

- (a) give effect to all reasonable requirements of DLRL for ensuring the safety of the authorised works and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any such works; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the case, give effect to any terms and conditions applicable to the apparatus (if any) constructed across, under or along the authorised works for which the alternative apparatus is to be substituted and to any other reasonable requirements of the specified undertaker.

**18.** If the facilities and rights to be afforded by DLRL in respect of any alternative apparatus under paragraph 16 and the terms and conditions subject to which the same are to be granted are, in the opinion of the arbitrator, more or less favourable on the whole to the specified undertaker than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbitrator shall make such provision for the payment of compensation to or by DLRL by or to the specified undertaker in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the case.

*Retained apparatus: protection and plan approval*

**19.** Not less than 56 days before commencing to construct or renew any specified work, DLRL shall submit to the specified undertaker plans of the works.

**20.** In relation to a work which is a specified work because of its proximity to or effect on a sewer, the plans to be submitted to the specified undertaker under paragraph 19 shall be detailed plans describing—

- (a) the exact position of the specified work;
- (b) the level at which it is proposed to be constructed or renewed;
- (c) the manner of its construction or renewal;
- (d) the position of all sewers within 15 metres of the specified work or upon which the specified work will impose a load; and
- (e) by way of detailed drawings, every alteration proposed to be made to any such sewer.

**21.** DLRL shall not commence the construction or renewal of any specified work to which paragraph 20 applies until the specified undertaker has given written approval of the plans so submitted.

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- 22.** Any approval of the specified undertaker required under paragraph 21—
- (a) may be given subject to reasonable conditions for any purpose mentioned in paragraph 23;
  - (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.

**23.** In relation to a work to which paragraph 20 applies, the specified undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its sewerage system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any sewer.

**24.** A specified work shall be constructed (and in the case of any temporary work removed) only in accordance with—

- (a) the plans submitted as aforesaid (and, in the case of plans relating to sewers, approved, deemed to have been approved or settled by arbitration, as amended from time to time by agreement between DLRL and the specified undertaker); and
- (b) all reasonable requirements made by the specified undertaker for the alteration, or otherwise for the protection, of the apparatus, or for securing access thereto;

and the specified undertaker shall be entitled by its officer to watch and inspect the carrying out of the work.

**25.** If within 42 days after the submission to it of any plans under paragraph 19, in consequence of the works proposed by DLRL the specified undertaker reasonably requires the removal of any apparatus and gives written notice to DLRL of that requirement, the foregoing provisions of this Schedule shall have effect as if the removal of such apparatus had been required by the specified undertaker under paragraph 8.

**26.** Nothing in paragraph 19 or 25 shall preclude DLRL from submitting at any time, or from time to time, but in no case less than 28 days before commencing the construction of any specified work, new plans thereof instead of the plans previously submitted, and thereupon the provisions of those paragraphs shall apply to, and in respect of, such new plans save that the reference in paragraph 25 to 42 days shall be treated as a reference to 21 days.

**27.** DLRL shall not be required to comply with paragraph 19 in a case where it is necessary to carry out emergency works but, in such a case, it shall give to the specified undertaker notice so soon as reasonably practicable, and a plan of the works so soon as reasonably practicable thereafter, and shall comply with paragraph 24 so far as reasonably practicable in the circumstances.

**28.** Nothing in paragraph 27 shall entitle DLRL to carry out works to any apparatus but, upon receipt of notice from DLRL, the specified undertaker shall proceed to carry out such works as may be required with all reasonable despatch.

#### *Co-operation*

**29.** Where in consequence of the proposed construction of any of the authorised works, DLRL or a specified undertaker requires the removal of apparatus under paragraph 8 or a specified undertaker makes requirements for the protection or alteration of apparatus under paragraph 24, DLRL shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and each specified undertaker shall use its best endeavours to co-operate with DLRL for that purpose.

### *Access*

**30.** If in consequence of the exercise of the powers of this Order the access to any apparatus is materially obstructed, DLRL shall provide such alternative means of access to such apparatus as will enable the specified undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

### *Expenses*

**31.** Subject to the provisions of the following paragraphs, DLRL shall repay to the specified undertaker the reasonable expenses incurred by the specified undertaker in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or exercise of statutory powers for such apparatus);
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by DLRL of any power under this Order;
- (c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by DLRL of any power under this Order; and
- (d) any other work or thing rendered reasonably necessary in consequence of the exercise by DLRL of any such power;

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

**32.** There shall be deducted from any sum payable under paragraph 31 the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

**33.** If in pursuance of the provisions of this Schedule—

- (a) alternative apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated;

and the placing of apparatus of that type or capacity or of those dimensions, or the placing of apparatus at that depth, as the case may be, is not agreed by DLRL or, in default of agreement, is not determined by arbitration to be necessary having regard, among other things, to the nature of the authorised works, then, if such placing involves cost in the construction of works under paragraphs 9 to 11 exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the specified undertaker by virtue of paragraph 31 above shall be reduced by the amount of that excess.

**34.** For the purposes of paragraph 33—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by the existing apparatus; and

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- (b) where the provision of a joint in a pipe or 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.

**35.** An amount which apart from this paragraph would be payable to the specified undertaker in respect of works by virtue of paragraphs 31 to 34 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 specified undertaker any financial benefit by deferment of the time for renewal of the apparatus or of the system of which it forms part in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June 1992, as revised and re-issued from time to time.

**36.** Paragraphs 31 to 35 shall not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the construction of works under this Schedule shall be determined in accordance with section 85 of that Act (sharing the costs of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by DLRL and the specified undertaker in such proportions as may be prescribed by any such regulations.

**37.** In any case where work is carried out by DLRL pursuant to paragraphs 13 to 15 and, if such work had been carried out by the specified undertaker, the repayment made to the specified undertaker under paragraph 31 would fall to be reduced pursuant to paragraphs 33 to 35, the specified undertaker shall pay to DLRL such sum as represents the amount of that reduction.

#### *Indemnity*

**38.** If by reason or in consequence of the construction, maintenance or failure of any of the authorised works, including any works carried out by DLRL pursuant to paragraph 13 or protective works required by a condition imposed under paragraph 22(a) or required under paragraph 24(b), or any subsidence resulting from any of those works, any damage shall be 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 other property of the specified undertaker, or there is any interruption in any service provided by the specified undertaker, DLRL shall repay the cost reasonably incurred by the specified undertaker in making good such damage, or restoring the service, and shall—

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

by reason or in consequence of any such damage or interruption and the fact that any act or thing may have been done by the specified undertaker on behalf of DLRL or in accordance with plans approved by the specified undertaker or in accordance with any requirement of the specified undertaker or under its supervision shall not, subject to paragraph 39, excuse DLRL from any liability under the provisions of this paragraph.

**39.** Nothing in paragraph 38 shall impose any liability on DLRL with respect to any damage or interruption to the extent that such damage or interruption is attributable to the neglect or default of the specified undertaker, its officers, servants, contractors or other agents.

**40.** The specified undertaker shall give to DLRL reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of DLRL which shall not be unreasonably withheld.

*Exercise of protective and survey powers*

**41.** DLRL shall, so far as is reasonably practicable, so exercise the powers conferred by article 16 (protective works to buildings) as not to obstruct or render less convenient the access to any apparatus.

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

*Arbitration*

**43.** Any difference arising between DLRL and a specified undertaker under this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration in accordance with article 47 (arbitration).

SCHEDULE 13

Article 38

FOR PROTECTION OF BRITISH WATERWAYS BOARD

**1.—(1)** The following provisions of this Schedule shall, unless otherwise agreed in writing between DLRL and the Board, have effect.

(2) In this Schedule—

“construction”, in relation to any specified work or protective work, includes—

- (a) the execution and placing of that work; and
- (b) any replacing, relaying, removal, alteration, renewal, maintenance, repair or reconstruction of that work as may be carried out during the period of 12 months from the completion of that work;

and “construct” and “constructed” shall be construed accordingly;

“detriment” means any damage to the Dock or any other property of the Board and, without prejudice to the generality of that meaning, includes—

- (a) the erosion of the bed or banks of the Dock, or the impairment of the stability of any works, lands or premises forming part of the Dock;
- (b) the silting of the Dock or the deposit of materials in it so as to permanently damage the Dock;
- (c) the pollution of the Dock;
- (d) any permanent alteration in the water level of the Dock, or permanent interference with the supply of water thereto, or drainage of water therefrom; and
- (e) any permanent harm to the ecology of the Dock (including any permanent adverse impact on any site of special scientific interest comprised in the Dock);

“the Dock” includes the waterside and any works, lands or premises belonging to the Board, or under its management or control, and held or used by the Board in connection with the Dock;

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

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

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“protective work” means a work which is reasonably necessary to be carried out before the commencement of construction of any specified work to prevent detriment;

“specified work” means so much of any of the authorised works as is situated upon, across, under, over or within 15 metres of, or may directly and physically affect, the Dock; and

“the waterside” means so much of the waterside as defined by section 2 of the 1994 Act, as is comprised within the foregoing definition of “the Dock”.

2. DLRL shall not under the powers conferred by this Order acquire compulsorily any land of the Board or any easement or other right over such land, other than such land or easements or other rights over such land, as is reasonably necessary for, or in connection with, the construction, maintenance or operation of the works authorised by this Order.

3.—(1) DLRL shall not in the exercise of the powers conferred by this Order permanently obstruct or interfere with pedestrian or vehicular access to the Dock unless such permanent obstruction or interference with such access is with the consent of the Board.

(2) Nothing in article 15 (discharge of water) shall authorise DLRL—

(a) to discharge any water directly or indirectly into the Dock; or

(b) to carry out any works to, or make any opening in, or otherwise interfere with, the Dock (including the banks and bed thereof),

except with the consent of the Board and in accordance with plans approved by, and under the supervision (if given) of, the engineer.

(3) DLRL shall not exercise the powers conferred by article 16 (protective works to buildings) in relation to any building forming part of the Dock, or situated on land or property of the Board forming part of the Dock, unless such exercise is with the consent of the Board.

(4) DLRL shall not exercise the powers conferred by article 18 (power to survey and investigate land, etc.) or the powers conferred by section 11(3) of the 1965 Act in relation to the Dock unless such exercise is with the consent of the Board.

(5) DLRL shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 8 to this Order, so as to permanently divert any right of access to the Dock, but any such right of access may be permanently diverted with the consent of the Board.

(6) The consent of the Board pursuant to any of sub-paragraphs (1), (3), (4) and (5) and the approval of plans under sub-paragraph (2) shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions which in the case of article 15 (discharge of water) may include conditions—

(a) specifying the maximum volume of water which may be discharged in any period; and

(b) authorising the Board on giving reasonable notice (except in an emergency, when the Board may require immediate suspension) to DLRL to require DLRL to suspend the discharge of water or reduce the flow thereof where this is necessary by reason of any operational requirement of the Board and where a reasonable alternative is available to enable DLRL to discharge the water in question during the period of the suspension.

4. DLRL shall not use any land or property of the Board forming part of the Dock for the passage or siting of vehicles, plant or machinery employed in the construction of the specified work other than—

(a) with the consent in writing of the engineer whose consent shall not be unreasonably withheld; and

(b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—

(i) for the prevention of detriment; or

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- (ii) in order to avoid or reduce any inconvenience to the Board, its officers and agents and all other persons lawfully on such land or property.

5. If in consequence of or in connection with the exercise of the powers conferred by this Order any part of a way over land forming part of the Dock or any public right of way giving access to the Dock (“the closed section”) is temporarily closed to persons on foot or on cycles and there is no way which provides a reasonable alternative, DLRL shall to the reasonable satisfaction of the Board, provide in substitution as sufficient and convenient a way as is reasonably practicable between the points of commencement and termination of the closed section for such time as the closure continues.

6. Where so required by the engineer DLRL shall, to the reasonable satisfaction of the engineer, fence off any specified work or protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the Dock, whether on a temporary or permanent basis or both.

7.—(1) Before the commencement of the initial construction of any part of the specified works and again following completion of the specified works DLRL shall bear the reasonable costs of the carrying out, by a qualified surveyor or engineer (“the surveyor”) to be approved by the Board and DLRL, of surveys (“the surveys”) of so much of the Dock and of any land and existing works of DLRL which may provide support for the Dock as will or may be affected by the specified works.

(2) For the purposes of the surveys DLRL shall—

- (a) on being given reasonable notice (save in case of emergency, when immediate access shall be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of DLRL which may provide support for the Dock as will or may be affected by the specified works; and
- (b) supply the surveyor as soon as reasonably practicable with all such information as he may reasonably require with regard to such land and existing works of DLRL and to the specified works or the method of construction thereof.

(3) The reasonable costs of the surveys shall include the costs of any dewatering or reduction of the water level of any part of the Dock (where reasonably required) which may be effected to facilitate the carrying out of the surveys and the provisions of this Schedule shall apply with all necessary modifications to any such dewatering or reduction in the water level as though the same were specified works.

(4) Copies of the surveys shall be provided to both the Board and DLRL.

8.—(1) DLRL shall, before commencing construction of any specified work, including any temporary works, supply to the Board proper and sufficient plans of that work and such further particulars available to it as the Board may within 14 days of the submission of the plans reasonably require for the approval of the engineer and shall not commence such construction of any specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed, and if within 56 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to the Board the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) When signifying his approval of the plans the engineer may specify—

- (a) any protective work (whether temporary or permanent); and
- (b) such other requirements as may be reasonably necessary to prevent detriment,

and such protective work shall be constructed by the Board or (if the Board so desires) by DLRL with all reasonable dispatch and DLRL shall not commence the construction of any specified work

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until the engineer has notified DLRL that the protective work has been completed to his reasonable satisfaction.

**9.** Without prejudice to its obligations under the foregoing provisions of this Schedule DLRL shall consult the Board on—

- (a) the design and appearance of the specified works, including the materials to be used for their construction; and
- (b) the environmental effects of the specified works;

and shall have regard to such views as may be expressed by the Board, to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant, in particular, to the requirements imposed on the Board by section 22 (general environmental and recreational duties) of the British Waterways Act 1995<sup>(9)</sup> and to the interest of the Board in preserving and enhancing the environment of the Dock.

**10.** DLRL shall give to the engineer 56 days' notice of its intention to commence the construction of any of the specified works or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Board may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Dock.

**11.** DLRL shall provide and maintain at its own expense in the vicinity of any specified works or protective work such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified work or protective work.

**12.—(1)** Any specified works shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid and with any requirements made under paragraph 8(3)(b);
- (b) under the supervision (if given) and, in the case of any specified work which directly and physically affects the Dock, to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable; and
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Board, its officers and agents and all other persons lawfully using the Dock.

(2) Nothing in this Order shall authorise DLRL to make or maintain any permanent works in or over the Dock so as to impede or prevent (whether by reducing the headroom or depth of water available for vessels, or the width of the Dock or otherwise) the passage of any vessel such as would have been capable of navigating the Dock on 2nd August 2006.

(3) Following the completion of the construction of the specified works DLRL shall restore the Dock to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

**13.—(1)** Any pile, stump or other obstruction which becomes exposed in consequence of the construction of a specified work shall be removed by DLRL or, if it is not reasonably practicable to remove it, shall be cut off at such level below the bed of the Dock as the Board may direct.

(2) If DLRL fail to remove any such pile, stump or other obstruction within 28 days after receipt of written notice from the Board requiring the removal, the Board may carry out the removal and recover its costs from DLRL.

**14.** DLRL shall not in the course of constructing any specified work or protective work or otherwise in connection therewith do or permit anything which may result in the pollution of the

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Dock or the deposit of materials therein and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph; but this provision shall not prevent DLRL from carrying out works within the Dock.

**15.—**(1) DLRL shall at all times on being given reasonable notice allow reasonable facilities to the engineer for access to any specified work during its construction; but such facilities for access shall be subject to DLRL's reasonable requirements for ensuring the safety of the railway and of the engineer and other persons working on the railway.

(2) DLRL shall supply the engineer with all such information as he may reasonably require with regard to any specified work or the method of constructing it.

**16.—**(1) If during the construction of a specified work or during a period of 24 months after the completion of a specified work any alterations or additions, either permanent or temporary, to the Dock are reasonably necessary in consequence of the construction of the specified work in order to avoid detriment, and the Board gives to DLRL reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), DLRL shall pay to the Board the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Board in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the Dock is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by DLRL to the Board under this paragraph.

**17.—**(1) DLRL shall, upon completion of any part of any permanent specified work, remove as soon as practicable any temporary works constructed and materials for temporary works placed in, on, over or under the Dock in connection with that part of the specified work.

(2) All temporary works shall be removed to the reasonable satisfaction of the engineer, and in the construction, maintenance and removal of such works DLRL shall not cause unavoidable detriment.

**18.** If at any time after the completion of a specified work, not being a work vested in the Board, the Board gives notice to DLRL informing it that the state of maintenance of the work appears to be such that the work is causing, or is likely to cause, detriment, DLRL shall, on receipt of such notice, take such steps as may be reasonably necessary to put the work in such state of maintenance as not to cause such detriment.

**19.** Any additional expenses which the Board may reasonably incur in maintaining the Dock under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such maintenance has been given to DLRL, be repaid by DLRL to the Board.

**20.** DLRL shall repay to the Board all fees, costs, charges and expenses reasonably incurred by the Board—

- (a) in constructing any protective works under the provisions of paragraph 8(3)(a) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by DLRL and the supervision by him of the construction or repair of any specified work and any protective work;
- (c) in respect of the employment during the period of the initial construction of any specified work or protective work of any inspectors, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting any part of the Dock and for preventing, so far as may be reasonably practicable, interference, obstruction,

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danger or accident arising from the construction or failure of the specified work or any protective work; and

(d) in bringing the specified work or any protective work to the notice of users of the Dock.

**21.**—(1) If any detriment shall be caused by the construction or failure of any specified work or protective work, DLRL (if so required by the Board) shall make good such detriment and shall pay to the Board all reasonable expenses to which the Board may be put, and compensation for any loss which the Board may sustain, in making good or otherwise by reason of the detriment.

(2) DLRL shall be responsible for and make good to the Board all costs, charges, damages, expenses and losses not otherwise provided for in this Schedule which may be occasioned to or reasonably incurred by the Board—

(a) by reason of the construction of any specified work or a protective work or the failure thereof; or

(b) by reason of any act or omission of DLRL or of any person in its employ or of its contractors or others whilst engaged upon the construction of any specified work or of a protective work,

and subject to sub-paragraph (4) DLRL shall effectively indemnify and hold harmless the Board from and against all claims and demands arising out of any of the matters referred to in paragraphs (a) and (b).

(3) The fact that any act or thing may have been done by the Board on behalf of DLRL or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision or in accordance with any directions or awards of an arbitrator shall not (if it was done without negligence on the part of the Board or of any person in its employ or of its contractors or agents) excuse DLRL from any liability under the provisions of this paragraph.

(4) The Board shall give DLRL reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of DLRL.

**22.** Where under any provision of this Schedule the Board or DLRL (as the case may be) is entitled to a capitalised sum, it shall provide such details of the formula by which the sum is calculated as may reasonably be requested by the party required to pay the sum.

**23.** Except as provided by this Order, nothing in this Order shall prejudice or derogate from the estates, rights, interests, privileges, liberties or franchises of the Board or alter or diminish any power, authority or jurisdiction vested in the Board at the making of this Order.

**24.** Any difference arising between DLRL and the Board under this Schedule (other than a difference as to the meaning or construction of this Schedule) shall be referred to and settled by arbitration in accordance with article 47 (arbitration).

SCHEDULE 14

Article 39

TRAFFIC REGULATION

| <i>(1)</i><br><i>Area</i> | <i>(2)</i><br><i>Street</i> | <i>(3)</i><br><i>Extent of Regulation</i> |
|---------------------------|-----------------------------|---|
| London Borough of Newham  | Armada Way                  | Within the Order limits                   |
|                           | Barbers Road                | Within the Order limits                   |

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

| <i>(1)</i><br><i>Area</i>       | <i>(2)</i><br><i>Street</i>               | <i>(3)</i><br><i>Extent of Regulation</i> |
|---------------------------------|---|---|
| London Borough of Tower Hamlets | Seagull Lane                              | Within the Order limits                   |
|                                 | Stonewall                                 | Within the Order limits                   |
|                                 | Aspen Way                                 | Within the Order limits                   |
|                                 | Aspen Way Slip Road at Blackwall Station  | Within the Order limits                   |
|                                 | Aspen Way Slip Road at East India Station | Within the Order limits                   |
|                                 | Hertsmere Road                            | Within the Order limits                   |
|                                 | Blackwall Way                             | Within the Order limits                   |
|                                 | Bow Road                                  | Within the Order limits                   |
|                                 | West India Dock Road                      | Within the Order limits                   |
|                                 | Rainhill Way                              | Within the Order limits                   |
|                                 | Cranwell Close                            | Within the Order limits                   |
|                                 | Devons Road                               | Within the Order limits                   |
|                                 | East India Dock Road                      | Within the Order limits                   |
|                                 | East India Dock Road Tunnel               | Within the Order limits                   |
|                                 | Lawless Street                            | Within the Order limits                   |
| Prestage Way                    |   |   |