

SCHEDULES

SCHEDULE 1

Article 4

THE SCHEDULED WORKS

In this Schedule—

“the East London Line” means the railway of the Company that runs between Shoreditch station and New Cross station and New Cross Gate station and the extensions authorised by this Order;

“the London Bridge to New Cross railway” means so much of that part of the railway of Railtrack that runs between London Bridge station and New Cross station;

“the London Bridge to Brockley railway” means so much of that part of the railway of Railtrack that runs between London Bridge station and Brockley station; and

“the South London Line” means so much of that part of the railway of Railtrack that runs between South Bermondsey station and Queens Road Peckham station.

In the London borough of Southwark and the London borough of Lewisham—

Work No. 1—A railway (547 metres in length) being a deviation of the southbound track of the East London Line commencing in the London borough of Southwark by a junction with the southbound track at a point 11 metres south of the bridge carrying Rotherhithe New Road over the East London Line, passing beneath Work No. 7 (footbridge) and terminating in the London borough of Lewisham by a junction with the southbound track at a point 70 metres south west of the junction of Trundley’s Road with Alloa Road.

Work No. 2—A railway (702 metres in length) being a deviation of the northbound track of the East London Line commencing in the London borough of Southwark by a junction with the northbound track at a point 11 metres south of the bridge carrying Rotherhithe New Road over the East London Line, passing beneath Work No. 7 (footbridge) and passing over Work No. 3 (railway) and terminating in the London borough of Lewisham by a junction with the northbound track at a point 210 metres south west of the junction of Trundley’s Road with Alloa Road.

Work No. 3—A railway (568 metres in length) forming a single track railway commencing in the London borough of Southwark by a junction with Work No. 1 (railway), at a point 60 metres south of the commencement of Work No. 1 (railway), passing beneath Work No. 7 (footbridge), Work No. 2 (railway) and the viaducts carrying the London Bridge to New Cross railway and terminating in the London borough of Lewisham at a point 36 metres north east of the northern abutment of the viaduct carrying the London Bridge to Brockley railway.

Work No. 4—A railway (518 metres in length) forming a single track railway commencing in the London borough of Lewisham by a junction with Work No. 2 (railway) at a point 96 metres south of the commencement of Work No. 2 (railway), passing beneath Work No. 7 (footbridge) and the viaducts carrying the London Bridge to New Cross railway and terminating in the London borough of Lewisham at a point 36 metres north east of the northern abutment of the viaduct carrying the London Bridge to Brockley railway.

In the London borough of Lewisham—

Work No. 5—A railway (928 metres in length) forming a twin track railway commencing by a junction with the termination of Works Nos. 3 and 4 (railways), passing over Surrey Canal

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Road by means of a new bridge incorporating a station and passing in a southerly direction by means of a cutting across Bridge House Meadows and passing over Hornshay Street by means of a new bridge and terminating by a junction with Work No. 6 (railway) 100 metres north west of the junction of Old Kent Road with Chesterfield Way.

Work No. 6—A railway (237 metres in length) being a realignment of the northbound and southbound tracks of the South London Line railway commencing by a junction with that railway at a point 40 metres south east of the junction of Ilderton Street with Hornshay Street and terminating by a junction with the South London Line railway at a point 62 metres north west of the junction of Old Kent Road with Chesterfield Way.

Work No. 7—A new footbridge including stairs and access ramps carrying a footpath commencing in Trundley's Terrace and passing over Works Nos. 1, 2, 3 and 4 (railways) and terminating in Oldfield Grove being a replacement for the existing footbridge carrying a footpath that lies between those two streets.

Work No. 8—A lowering of Surrey Canal Road commencing at a point 47 metres west of the junction of Surrey Canal Road with Mercury Way and terminating at a point 224 metres west of that junction.

Work No. 8A—A lowering of the access road leading to Excelsior Industrial Estate commencing at a point 187 metres west of the junction of Surrey Canal Road with Mercury Way and terminating at a point 22 metres south of its commencement.

Work No. 8B—A lowering of the access road leading to Millwall Football Club commencing at a point 161 metres north west of the junction of Surrey Canal Road with Mercury Way and terminating at a point 155 metres west of that junction.

Work No. 8C—A lowering of the access road leading to Orion Business Centre commencing at a point 80 metres north west of the junction of Surrey Canal Road with Mercury Way and terminating at a point 77 metres west of that junction.

Work No. 9—A railway (1285 metres in length) being a deviation of the East London Line commencing by a junction with that railway at a point 190 metres east of the junction of Surrey Canal Road with Landmann Way forming a twin track railway and passing in a southerly direction over Cold Blow Lane by means of a new bridge to the commencement of Work No. 13 (railway) and thereafter by means of a single track railway passing south and to the east of New Cross Gate station and terminating by a junction with the southbound slow line of the London Bridge to Brockley railway at a point 203 metres south east of the junction of New Cross Road with Jerningham Road.

Work No. 10—A railway (830 metres in length) commencing by a junction with Work No. 9 (railway) at a point 210 metres east of the junction of Surrey Canal Road with Landmann Way forming a single track railway and passing in a south westerly direction over Cold Blow Lane by means of a new bridge and passing over the London Bridge to Brockley railway by means of a new bridge and terminating by a junction with the northbound slow line of that railway at a point 190 metres south east of the junction of Robert Lowe Close with Brocklehurst Street.

Work No. 11—A railway (618 metres in length) commencing by a junction with Work No. 9 (railway) at a point 215 metres south east of the junction of Surrey Canal Road with Landmann Way and terminating by a junction with Work No. 9 (railway) at a point 158 metres north east of the junction of Robert Lowe Close with Brocklehurst Street, forming with sidings, a train servicing facility.

Work No. 12—A railway (240 metres in length) forming a single track railway commencing by a junction with Work No. 9 (railway) at a point 82 metres east of the junction of New Cross Road with Jerningham Road and terminating at a point 263 metres south east of the junction of those streets.

Work No. 13—A railway (142 metres in length) forming a single track railway commencing by a junction with Work No. 9 (railway) at a point 155 metres north east of the junction of Robert Lowe Close with Brocklehurst Street and terminating by a junction with the southbound slow line of the London Bridge to Brockley railway at a point 203 metres south east of the junction of those streets.

Work No. 14—A new street commencing at a point 50 metres west of the junction of Cold Blow Lane with Sandford Street forming a vehicular access to the train servicing facility comprised within Work No. 11 (railway) and terminating at a point 117 metres south west of the junction of those streets.

SCHEDULE 2

Articles 4 and 18

ACQUISITION OF CERTAIN LAND

(1) Area	(2) Number of land shown on deposited plans	(3) Purpose for which land may be acquired
In the London borough of Lewisham	71	For the provision of a means of a pedestrian access between points F24, F23, F22 and F18 and between F18 and the station comprised within Work No. 5.
	102, 103, 104 and 107	For the provision of access for construction purposes and the future maintenance of Works Nos. 9, 10, 11, 13 and 14 and the provision of an alternative means of vehicular access to premises in consequence of the construction of those works.
	116	For the provision of access for construction purposes and future maintenance of Works Nos. 9, 10, 11 and 13.
	119	For the provision of a working site and access for construction purposes and future maintenance of Works Nos. 9 and 12.

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SCHEDULE 3

Article 6

STREETS SUBJECT TO STREET WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street subject to street works</i>
In the London borough of Lewisham	Oldfield Grove Trundley's Terrace Footpath between points F1 and F2 Footpath between points F10 and F11, F13, F15, F17 and F18 Footpath between points F12 and F13 Footpath between points F14 and F15 Footpath between points F15 and F16 Surrey Canal Road Access road (Excelsior Industrial Estate) (Work No. 8A) Access road (rear of Millwall Football Club) (Work No. 8B) Access road (Orion Business Centre) (Work No. 8C) Hornshay Street Cold Blow Lane

SCHEDULE 4

Article 7

STREETS TO BE STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of stopping up</i>	<i>(4)</i> <i>New street to be substituted</i>
London borough of Lewisham	Footpath between Trundley's Terrace and Oldfield Grove carried over the East London Line railway by means of a footbridge	Within the limit of deviation for Work No. 7	New footpath to be provided by means of a new footbridge (Work No. 7)
London borough of Lewisham	Footpath between Silwood Street and Rollins Street	Between points F2, F3, F4, F5, F6, F8, F9 and F10, between points F6 and F7 and between points F9 and F11	New footpath between points F2, F3, F4, F5, F19 and F20 and between points F21, F9 and F10

SCHEDULE 5

Article 8

STREETS TO BE TEMPORARILY STOPPED UP

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Street to be stopped up</i>	<i>(3)</i> <i>Extent of Temporary stopping up</i>	
In the London borough of Lewisham	Oldfield Grove	Within the limits	
	Trundley's Terrace	Within the limits	
	Footpath between Reculver Road and Silwood Street	Between points F1 and F2	
	Footpath between Rollins Street and Hornshay Street		Between points F10, F11 and F18
			Between points F12 and F13
			Between points F14 and F15
			Between points F16 and F17
	Surrey Canal Road	Within the limits	
	Access road (Excelsior Industrial Estate) (Work No. 8A)	Within the limits	
	Access road (rear of Millwall Football Club) (Work No. 8B)	Within the limits	
	Access road (Orion Business Centre) (Work No. 8C)	Within the limits	
	Hornshay Street	Within the limits	
Cold Blow Lane	Within the limits		

SCHEDULE 6

Article 9

ACCESS TO WORKS

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Description of Access</i>
In the London borough of Lewisham	Point "A1" to Landmann Way
	Point "A2" to Surrey Canal Road
	Point "A3" to Cold Blow Lane

SCHEDULE 7

Article 21

MODIFICATION OF COMPENSATION AND COMPULSORY
PURCHASE ENACTMENTS FOR CREATION OF NEW RIGHTS*Compensation Enactments*

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

2.—(1) Without prejudice to the generality of paragraph 1 above, the 1973 Act shall have effect subject to the modifications set out in sub-paragraphs (2) and (3) below.

(2) In section 44(1) (compensation for injurious affection), as it applies to compensation for injurious affection under section 7 of the 1965 Act as substituted by paragraph 4 below—

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

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

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

Adaptation of 1965 Act

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

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

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

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

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

of his, or injuriously affecting that other land by the exercise of the powers conferred by this or the special Act.”.

5. For section 8 of the 1965 Act (which relates to cases in which a vendor cannot be required to sell part only of a building or garden) there shall be substituted the following—

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

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

the London Underground (East London Line Extension) (No. 2) Order 2001 (“the Order”) shall, in relation to that person, cease to authorise the purchase of the right and be deemed to authorise the purchase of that person’s interest in the whole of the relevant land including, where the land consists of such a park or garden, the house to which it belongs, and the notice shall be deemed to have been served in respect of that interest on such date as the tribunal directs.

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

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

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

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

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

7. Section 11 of the 1965 Act (powers of entry) shall be so modified as to secure that, as from the date on which the acquiring authority have served notice to treat in respect of any right, they have power, exercisable in the like circumstances and subject to the like conditions, to enter for the

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purpose of exercising that right (which shall be deemed for this purpose to have been created on the date of service of the notice); and sections 12 (penalty for unauthorised entry) and 13 (entry on warrant in the event of obstruction) of the 1965 Act shall be modified correspondingly.

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

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

SCHEDULE 8

Articles 15 and 23

LAND OF WHICH TEMPORARY POSSESSION MAY BE TAKEN

PART I

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purposes for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised Work</i>
London borough of Lewisham	46	Execution of safeguarding works pursuant to article 15 of this Order	Works Nos. 5 and 8
	83, 84, 85 and 86	Execution of safeguarding works pursuant to article 15 of this Order	Works Nos. 5, 8, and 8B

PART II

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purposes for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised Work</i>
London borough of Southwark	2	For the provision of access for construction purposes	Works Nos. 5 and 6
London borough of Lewisham	12, 13, 14 and 15	For the provision of a working site and	Works Nos. 1, 2, 3, 4, 5 and 7

<i>(1)</i> <i>Area</i>	<i>(2)</i> <i>Number of land shown on deposited plans</i>	<i>(3)</i> <i>Purposes for which temporary possession may be taken</i>	<i>(4)</i> <i>Authorised Work</i>
		access for construction purposes and provision of a temporary footpath between points F2 and A1	
	35	For the provision of a working site and access for construction purposes	Works Nos. 5, 8 and 8C
	67, 68, 69 and 70	For the provision of a working site	Work No. 5
	80 and 81	For the provision of a working site and access for construction purposes	Works Nos. 5 and 6
	82	For the provision of access for the carrying out of safeguarding works under article 15 of this Order	Works Nos. 5, 8 and 8B
	110	For the provision of access for construction purposes	Works Nos. 9, 10, 11 and 14

SCHEDULE 9

Article 33

PROVISION 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 powers of statutory undertakers etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by the Company 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) above, references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility or undertakers or of a public telecommunications operator is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1) above, any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the

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Company compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

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

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

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

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

(6) In this paragraph—

“public telecommunications operator” means—

- (a) a person authorised by a licence to which section 9 of the Telecommunications Act 1984(1) applies, to run a public telecommunications system; or
- (b) a person to whom the telecommunications code has been applied pursuant to section 10 of that Act; and

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

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under article 7 of this Order 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) Where a street is stopped up under article 7 of this Order any statutory utility whose apparatus is under, in, upon, over, along or across the street may and, if reasonably requested so to do by the Company, shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the 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.

(3) Subject to the following provisions of this paragraph, the Company shall pay to any statutory utility an amount equal to the cost reasonably incurred by the 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.

(4) If in the course of the execution of relocation works under sub-paragraph (2) above—

(1) 1984 c. 12.

- (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 the Company, or, in default of agreement, is not determined by arbitration to be necessary, 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 paragraph would be payable to the statutory utility by virtue of sub-paragraph (3) above shall be reduced by the amount of that excess.

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

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

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) above (and having regard, where relevant, to sub-paragraph (4) above) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the utility a 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 30 June 1992, as revised and re-issued from time to time.

(7) Sub-paragraphs (3) to (6) above shall not apply where the authorised works constitute major transport works for the purposes of Part III 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 the Company and the statutory utility in such proportions as may be prescribed by any such regulations.

(8) In this paragraph—

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

“relocation works” means works executed, or apparatus provided, under sub-paragraph (2) above; and

“statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or a public telecommunications operator as defined in paragraph 1(6) above.

Railway undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers under article 6 of this Order 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 Highways Act 1980)—

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- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers; or
 - (b) forms part of a level crossing belonging to any such undertakers or to any other person; except with the consent of the undertakers or, as the case may be, of the person to whom the level crossing belongs.
- (2) Sub-paragraph (1) above shall not apply to the carrying out under this Order of emergency works, within the meaning of Part III of the 1991 Act.
- (3) A consent given for the purposes of sub-paragraph (1) above may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

SCHEDULE 10

Article 34

PROTECTIVE PROVISIONS

PART I

Protection for electricity, gas and water undertakers

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

(2) In this Part of this Schedule—

“adequate alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of electricity undertakers, electric lines or electrical plant (as defined in the Electricity Act 1989(2)) belonging to or maintained by such undertakers;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a public gas transporter for the purposes of gas supply; and
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply;

(not being, except in paragraph 2 below, apparatus in respect of which the relations between the Company and the undertakers are regulated by the provisions of Part III of the 1991 Act) and includes any structure for the lodging within that structure of apparatus or any structure required for giving access to apparatus;

“functions” includes powers and duties;

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

“plan” includes sections and method statements; and

“undertakers” means any person authorised to carry on, in any area within which the Company is by this Order authorised to purchase land or execute works, an undertaking for the transportation or storage of gas, the supply of water or for the generation, transmission or

(2) 1989 c. 29.

supply of electricity; and, in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained.

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

2. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 8 of this Order, the undertakers shall be at liberty at all times to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable them to maintain, renew or use any apparatus which at the time of the stopping up or diversion was in that highway.

3.—(1) The Company, in the case of the powers conferred by article 15 of this Order, shall, so far as is reasonably practicable, so exercise those powers as not to obstruct or render less convenient the access to any apparatus. If by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the undertakers or any interruption in the supply of electricity, gas or water, as the case may be, by the undertakers is caused, the Company shall bear and pay the costs reasonably incurred by the undertakers in making good such damage or restoring the supply; and, subject to sub-paragraph (2) below, shall—

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

by reason of any such damage or interruption.

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

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

5.—(1) If the Company, in the exercise of the powers of this Order, acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part of this Schedule and any right of the undertakers to maintain or renew that apparatus in that land shall not be extinguished until adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers.

(2) If the Company, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, requires the removal of any apparatus placed in that land, it shall give to the undertakers written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed so as to provide adequate alternative apparatus in place of the apparatus to be removed, and in that case (or if in consequence of the exercise of any of the powers of this Order the undertakers reasonably require to remove any apparatus) the Company shall, subject to sub-paragraph (3) below, afford to the undertakers the necessary facilities and rights for the construction of the alternative apparatus in other land of the Company and thereafter for the maintenance and renewal of that apparatus.

(3) If the alternative apparatus or any part of it is to be constructed elsewhere than in other land of the Company, or the Company is unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or part of it is to be constructed, the undertakers shall, on receipt of

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a written notice to that effect from the Company, forthwith use all reasonable endeavours to obtain the necessary facilities and rights in that last-mentioned land.

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

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

(6) Notwithstanding anything in sub-paragraph (5) above, if the Company gives notice in writing to the undertakers that it desires itself to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of the Company, that work, instead of being executed by the undertakers, may with the prior written consent of the undertakers (which shall not be unreasonably withheld and shall be subject to any such conditions as are reasonable and proper to protect the apparatus) be executed by the Company with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertakers.

(7) Nothing in sub-paragraph (6) above shall authorise the Company to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Company affords to the undertakers facilities and rights for the construction, maintenance or renewal in land of the Company 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 the Company and the undertakers or in default of agreement settled by arbitration in accordance with sub-paragraphs (2) and (3) below.

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

- (a) give effect to all reasonable requirements of the Company for ensuring the safe and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Company or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions (if any) applicable to the apparatus for which the alternative apparatus is to be substituted and have regard to the undertakers' ability to fulfil their service obligation.

(3) If the facilities and rights to be afforded by the Company in respect of any alternative apparatus and the terms and conditions subject to which those facilities and rights are to be granted are in the opinion of the arbitrator less favourable on the whole to the undertakers than the facilities and rights enjoyed by them in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by the Company to the undertakers in respect thereof as appears to him to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before commencing to execute any works that are referred to in paragraph 5(2) above and are near to or will or may affect any apparatus the removal of which has not

been required by the Company under paragraph 5(2), the Company shall submit to the undertakers a plan, section and description of the works to be executed.

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

(3) Any requirements made by the undertakers under paragraph (2) above shall be made within 21 days after the submission to them of a plan, section and description under sub paragraph (1) above.

(4) If the undertakers within 21 days after the submission to them of a plan, section and description shall, in consequence of the works proposed by the Company, reasonably require the removal of any apparatus and give written notice to the Company of that requirement, the foregoing provisions of this Part of this Schedule shall apply as if the removal of the apparatus had been required by the Company under paragraph 5(2) above.

(5) Nothing in this paragraph shall preclude the Company from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description thereof in place of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

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

8. Where, by reason of this Order, any part of any highway in which any apparatus is situated ceases to be part of a highway the undertakers may exercise the same rights of access to such apparatus as they enjoyed immediately before the making of this Order, but nothing in this paragraph shall affect any right of the Company or of the undertakers to require removal of such apparatus under this Part of this Schedule or the power of the Company to execute works in accordance with paragraph 7 above.

9.—(1) Subject to the following provisions of this paragraph, the Company shall pay to the undertakers the costs, charges and expenses reasonably incurred by the undertakers in or in connection with the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2) above (including the acquisition of any facilities or rights under paragraph 5(3) above), less the value of any apparatus removed under the provisions of this Part of this Schedule (that value being calculated after removal) and shall also make compensation to the undertakers—

- (a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this Part of this Schedule); and
- (b) for any other expenses, loss, damages, penalty or costs incurred by the undertaker;

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

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

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

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- (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 the Company or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the undertakers by virtue of sub-paragraph (1) above shall be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(4) An amount which apart from this sub-paragraph would be payable to the undertakers in respect of works by virtue of sub-paragraph (1) above (and having regard, where relevant, to sub-paragraph (2) above) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertakers 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 30 June 1992.

(5) Sub-paragraphs (1) to (4) above shall not apply where the authorised works constitute major transport works for the purposes of Part III of the 1991 Act, but instead—

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

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

10.—(1) Where, by reason of the stopping up of any highway under the powers of this Order, any apparatus belonging to the undertakers and laid or placed in such highway or elsewhere is rendered derelict or unnecessary, the Company shall, subject to sub-paragraph (2) below, pay to the undertakers the then value of such apparatus (which shall thereupon become the property of the Company) and the reasonable costs of and incidental to the cutting off of such apparatus from any other apparatus, and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason of such apparatus being so rendered derelict or unnecessary.

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

11. Any difference arising between the Company and the undertakers under this Part of this Schedule shall be referred to and settled by arbitration under article 44 of this Order.

12. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the Company and the undertakers in respect of any apparatus laid or erected in land belonging to the Company on the coming into force of this Order.

PART II

Protection for sewerage undertakers

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

(2) In this Part of this Schedule—

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

“sewer” means a public sewer within the meaning of the Water Industry Act 1991⁽³⁾ and includes a disposal main within the meaning of that Act not being (except in paragraph 18(1) below) a sewer in respect of which relations between the Company and the undertaker are regulated by the provisions of Part III of the 1991 Act;

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

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

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

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

(a) may be given subject to reasonable conditions;

(b) shall not be unreasonably withheld;

(c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

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

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

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

15.—(1) The specified work shall be constructed, and in the case of any temporary work removed, in accordance with the plans approved, or deemed to have been approved, or settled by arbitration, as the same may be amended from time to time by agreement between the Company and the undertaker, and in the construction or removal of the specified work the Company shall comply with all reasonable requirements of the undertaker and shall provide new, altered or substituted sewers or works for the protection of any sewers of the undertaker in such manner as the undertaker may

(3) 1991 c. 56.

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reasonably require by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such sewer by reason of any specified work.

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

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

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

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

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

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

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

- (a) a sewer of better type, of greater capacity or of greater dimensions is placed in substitution of an existing sewer of worse type, of smaller capacity or of smaller dimensions; or
- (b) a sewer (whether an existing sewer or a sewer substituted for an existing sewer) is placed at a depth greater than the depth at which the existing sewer was;

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

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

(7) An amount which apart from this sub-paragraph would be payable to the undertaker in respect of works by virtue of sub-paragraph (1) above (and having regard, where relevant, to sub-paragraph (5) above) shall, if the works include the placing of a sewer provided in substitution for a sewer placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the sewer in the ordinary course, be reduced by the amount which represents that benefit 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 30 June 1992.

(8) Sub-paragraph (1), (2) and (5) to (7) above shall not apply where the authorised works constitute major transport works for the purposes of Part III of the 1991 Act, but instead—

- (a) the allowable costs of the construction of works under this Part of this Schedule shall be determined in accordance with section 85 of that Act (sharing 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 the Company and the undertaker in such proportions as may be prescribed by any such regulations.

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

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

18.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 8 of this Order, the undertaker shall be at liberty at all times to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain, renew, protect or use any sewer which at the time of the stopping up or diversion was in that highway.

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

19. The Company shall, so far as is reasonably practicable, so exercise the powers conferred by article 15 of this Order as not to obstruct or render less convenient the access to any sewer.

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

21. Any difference arising between the Company and the undertaker under this Part of this Schedule shall be referred to and settled by arbitration under article 44 of this Order.

22. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the Company and the undertaker in respect of any sewer or other

apparatus constructed, laid or erected in land belonging to the Company before the coming into force of this Order.

SCHEDULE 11

Article 36

PROTECTION FOR RAILTRACK

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

(2) In this Schedule—

“construction”, except in paragraph 19 below, includes reconstruction and for the purposes of paragraphs 14 and 17 below includes maintenance and repair of the specified works;

“designated lands” means the land delineated on the deposited plans and numbered 101, 105, 106 and 108 in the London borough of Lewisham;

“the engineer” means an engineer to be appointed by Railtrack PLC;

“London Bridge to Brockley railway” has the same meaning as in Schedule 1 to this Order;

“plans” includes sections, drawings, particulars and schedules of construction;

“Railtrack” means Railtrack PLC and any associated company of Railtrack PLC which holds railway property for railway purposes and for this purpose “associated company” means any company which is within the meaning of section 736 of the Companies Act 1985⁽⁴⁾ the holding company of Railtrack PLC, a subsidiary of Railtrack PLC or another subsidiary of the holding company of Railtrack PLC;

“railway property” means any railway of Railtrack PLC, and any works, apparatus and equipment of Railtrack connected therewith and includes any lands held or used by Railtrack for the purposes of such railway or works apparatus and equipment;

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

“the specified works” means so much of the authorised works as may be situated upon, across, under, over or within 15 metres of railway property or may in any way 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 Railways Act 1993⁽⁵⁾.

2. The exercise by the Company against Railtrack of the powers of article 16 of this Order or the powers of section 11(3) of the 1965 Act shall be confined to lands in relation to which the Company’s powers of compulsory acquisition are not subject to the consent of Railtrack PLC under paragraph 4 below.

3.—(1) The Company shall not in the exercise of the powers conferred by article 8 of this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Railtrack PLC

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

(4) 1985 c. 6.

(5) 1993 c. 43.

4.—(1) Subject to sub-paragraph (3) below, the Company shall not pursuant to the powers of this Order, without the consent of Railtrack PLC which shall not be unreasonably withheld, acquire or enter upon, take or use, whether temporarily or permanently or acquire any new rights over any railway property within the limits of deviation.

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

(3) Nothing in sub-paragraph (1) above shall prevent the Company pursuant to article 18 of this Order from acquiring compulsorily all or any part of the designated lands provided that such acquisition shall be subject to the exercise by Railtrack of such rights as are reasonably required in connection with the safe operation and maintenance of the London Bridge to Brockley railway which do not interfere with the construction and maintenance of the specified works.

5. The Company shall, before commencing the construction of the specified works, furnish to Railtrack PLC such proper and sufficient plans of the specified works (including particulars as to the working methods and the regulation of traffic in the vicinity of the specified works) as may reasonably be required by the engineer and shall not commence the specified works until those plans have been approved in writing by the engineer or settled by arbitration as provided in paragraph 6 below.

6. The engineer's approval under paragraph 5 above shall not be unreasonably withheld and any question of whether it has been unreasonably withheld shall be settled by arbitration, and in any event if within 56 days after such plans have been furnished to Railtrack PLC the engineer has not notified his disapproval of the plans and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted.

7. If within 56 days after such plans have been furnished to Railtrack PLC, Railtrack PLC gives notice to the Company that Railtrack PLC desires to construct any part of the specified works, which in the opinion of the engineer will or may affect the stability of railway property and the safe operation of the railways of Railtrack PLC or the services of train operators using the same, then, if the Company desires such part of the specified works to be constructed, Railtrack PLC shall construct it with all reasonable dispatch on behalf of, and to the reasonable satisfaction of, the Company in accordance with the plans approved or deemed to be approved or settled provided in paragraph 6 above.

8. Upon signifying his approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the commencement of the construction of the specified works to ensure the stability of railway property, the continuation of the safe and effective operation of the railways of Railtrack PLC or the services of train operators using the same (including any relocation of works, apparatus and equipment necessitated by the specified works) and the comfort and safety of the passengers who may be affected by the specified works, and such protective works as may be reasonably necessary for those purposes shall be constructed by Railtrack PLC with all reasonable dispatch, or, if Railtrack PLC so desires, such protective works shall be carried out by the Company at its own expense and the Company shall not commence the construction of the specified works until the engineer has notified the Company that the protective works have been completed.

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

10. The construction of the specified works and of any protective works carried out by the Company by virtue of the provisions of paragraph 8 above shall, when commenced, be carried out with all reasonable dispatch in accordance with the plans approved or deemed to be approved or

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settled as provided in paragraph 6 above and under the supervision (if given), and to the reasonable satisfaction, of the engineer, and in such manner as to cause as little damage as may be to railway property and as little interference as may be with the conduct of traffic on the railways of Railtrack PLC and the use by passengers of railway property and, if any damage to railway property or any such interference shall be caused by the carrying out of the specified works the Company shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to Railtrack PLC all reasonable expenses to which Railtrack may be put and compensation for any loss which it may sustain by reason of any such damage or interference.

11. Nothing in paragraph 10 shall impose any liability on the Company with respect to any damage, cost, expense or loss which is attributable to the act, neglect or default of Railtrack or any person in its employ, or of its contractors or agents and any liability of the Company under this paragraph shall be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the act, neglect or default of Railtrack or of any person in its employ, or of its contractors or agents.

12. The Company shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction of the specified works.

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

14. If any alterations or additions, either permanent or temporary, to railway property shall be reasonably necessary during the construction of the specified works, or during a period of 12 months after the completion of those works, in consequence of the construction of the specified works, such alterations and additions may be carried out by Railtrack PLC and, if Railtrack PLC gives to the Company reasonable notice of its intention to carry out such alterations or additions, the Company shall pay to Railtrack PLC the reasonable cost thereof including, in respect of permanent alterations and additions, a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by Railtrack in maintaining, working and, when necessary, renewing any such alterations or additions.

15. If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving shall be set off against any sum payable by the Company to Railtrack under this Schedule.

16. The Company shall repay to Railtrack PLC all reasonable costs, charges and expenses reasonably incurred by Railtrack—

- (a) in constructing any part of the specified works on behalf of the Company as provided by paragraph 7 above or in constructing any protective works under the provisions of paragraph 8 above, including, in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably incurred by Railtrack in maintaining and renewing such works;
- (b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
- (c) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the

construction or failure of the specified works, or from the substitution or diversion of services which may be reasonably necessary for the same reason;

- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of the specified works; and
- (e) in respect of the supervision by the engineer of the construction of the specified works.

17. The Company shall be responsible for, and make good to Railtrack PLC all reasonable costs, charges, damages, and expenses not otherwise provided for in this Schedule which may be occasioned to, or reasonably incurred by, Railtrack—

- (a) by reason of the construction of the specified works (as opposed to their existence) or the failure of the specified works; or
- (b) by reason of any act or omission of the Company or of any person in its employ, or of its contractors or others whilst engaged upon the construction of the specified works;

and the Company shall indemnify Railtrack from and against all claims and demands arising out of or in connection with the construction of the specified works or any such failure, act or omission as aforesaid, and the fact that any act or thing may have been done in accordance with any requirement of the engineer or under his supervision, shall not (if it was not attributable to the act, neglect or default of Railtrack or of any person in its employ, or of its contractors or agents) excuse the Company from any liability under the provisions of this Schedule.

18.—(1) Any liability of the Company under paragraph 17 above shall be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the act, neglect or default of Railtrack or of any person in its employ, or of its contractors or agents; and

(2) Railtrack shall give to the Company immediate notice of any claim or demand and no settlement or compromise shall be made without the prior consent of the Company.

19.—(1) The sums payable by the Company under paragraph 17 above shall include a sum equivalent to the relevant costs.

(2) Subject to the terms of any agreement between Railtrack PLC and the relevant train operators regarding the timing or method of payment of the relevant costs in respect of that train operator, Railtrack PLC shall promptly pay to each train operator the amount of any sums which Railtrack PLC receives under sub-paragraph (1) above which relates to the relevant costs of that train operator.

(3) The obligation under sub-paragraph (1) above to pay Railtrack PLC the relevant costs shall, in the event of default, be enforceable directly by the train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (2) above.

20. Nothing in paragraph 19 above shall entitle Railtrack or any train operator to any compensation in relation to works which have been transferred to and vested in Railtrack PLC by any agreement made under article 29 of this Order; but nothing in this paragraph shall prejudice any entitlement of Railtrack or any train operator to compensation—

- (a) which has arisen at the date of the transfer and vesting; or
- (b) in respect of the failure of any works resulting from any defect present at the date upon which they are so transferred to and vested in Railtrack PLC.

21. In the assessment of compensation payable under this Schedule there shall not be taken into account any enhancement of that compensation attributable to any action taken or any agreement entered into by Railtrack if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining compensation or increased compensation and any reference in this paragraph to compensation shall be deemed to relate to any payment due to Railtrack under this Schedule.

22. Any difference arising between the Company and Railtrack under this Schedule shall be referred to and settled by arbitration under article 44 of this Order.

SCHEDULE 12

Article 37

PROTECTION FOR LONDON UNDERGROUND LIMITED

1.—(1) For the protection of the Company the following provisions shall, unless otherwise agreed in writing between the undertaker and the Company for the purposes of this Schedule, have effect.

(2) In this Schedule—

“the Company” means LUL, any subsidiary of LUL, a PPP Company, any subsidiary of a PPP Company and any PPP related third party;

“construction” includes reconstruction and for the purposes of paragraphs 13 and 16 below of this article includes maintenance and repair of the specified works;

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

“LUL” means London Underground Limited;

“PPP Company” has the same meaning as section 210(5) of the Greater London Authority Act 1999(6);

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

“plans” includes sections, drawings, particulars and schedules of construction;

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

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

“the undertaker” means any person to whom the powers of LUL under the terms of this Order to construct, maintain, use and operate the authorised works or any part of those works are transferred in accordance with the terms of a transfer agreement pursuant to article 28 of this Order.

2. The exercise by the undertaker against the Company of the powers of article 16 of this Order or the powers of section 11(3) of the 1965 Act shall be confined to lands in relation to which the undertaker’s powers of compulsory acquisition are not subject to the consent of LUL under paragraph 4 below.

3.—(1) The undertaker shall not in the exercise of the powers conferred by article 8 of this Order prevent pedestrians or vehicular access to any railway property, unless preventing such access is with the consent of LUL.

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

(6) 1999 c. 29.

4.—(1) The undertaker shall not pursuant to the powers of this Order, without the consent of LUL which shall not be unreasonably withheld, acquire or enter upon, take or use, whether temporarily or permanently or acquire any new rights over any railway property within the limits.

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

5. The undertaker shall, before commencing the construction of the specified works, furnish to LUL such proper and sufficient plans of the specified works (including particulars as to the working methods and the regulation of traffic in the vicinity of the specified works) as may reasonably be required by the engineer and shall not commence the specified works until those plans have been approved in writing by the engineer or settled by arbitration as provided in paragraph 6 below.

6. The engineer's approval under paragraph 5 above shall not be unreasonably withheld and any question of whether it has been unreasonably withheld shall be settled by arbitration, and in any event if within 56 days after such plans have been furnished to LUL the engineer has not notified his disapproval of those plans and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted.

7. If within 56 days after such plans have been furnished to LUL, LUL gives notice to the undertaker that LUL desires to construct any part of the specified works, which in the opinion of the engineer will or may affect the stability of railway property and the safe operation of the railways of LUL or the services of operators using the same, then, if the undertaker desires such part of the specified works to be constructed, LUL shall construct it with all reasonable dispatch on behalf of, and to the reasonable satisfaction of, the undertaker in accordance with the plans approved or deemed to be approved or settled as provided in paragraph 6 above.

8. Upon signifying his approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the commencement of the construction of the specified works to ensure the stability of railway property, the continuation of safe and effective operation of the railways of the Company or the services of operators using those railways (including any relocation of works, apparatus and equipment necessitated by the specified works) and the comfort and safety of the passengers who may be affected by the specified works, and such protective works as may be reasonably necessary for those purposes shall be constructed by LUL with all reasonable dispatch, or, if LUL so desires, such protective works shall be carried out by the undertaker at its own expense and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed.

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

10. The construction of the specified works and of any protective works carried out by the undertaker by virtue of the provisions of paragraph 8 above shall, when commenced, be carried out with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as provided in paragraph 6 above and under the supervision (if given), and to the reasonable satisfaction, of the engineer, and in such manner as to cause as little damage as may be to railway property and as little interference as may be with the conduct of traffic on the railways of LUL and the use by passengers of railway property and, if any damage to railway property or any such interference shall be caused by the carrying out of the specified works the undertaker shall, notwithstanding any such approval make good such damage and shall pay to LUL all reasonable expenses to which it may be put and compensation for any loss which it may sustain by reason of any such damage or interference.

Status: This is the original version (as it was originally made).

11. Nothing in paragraph 10 above shall impose any liability on the undertaker with respect to any damage, cost, expense or loss which is attributable to the act, neglect or default of the Company or any person in its employ, or of its contractors or agents and any liability of the undertaker under this paragraph shall be reduced proportionately to the extent to which any damage, costs, expense or loss is attributable to the act, neglect or default of the Company or of any person in its employ, or of its contractors or agents.

12. The undertaker shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction of the specified works.

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

14. If any alterations or additions, either permanent or temporary, to railway property shall be reasonably necessary during the construction of the specified works, or during a period of 12 months after their completion, in consequence of the construction of the specified works, such alterations and additions may be carried out by LUL and, if LUL gives to the undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker shall pay to LUL the reasonable cost of the alterations or additions including, in respect of permanent alterations and additions, a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by the Company in maintaining, working and, when necessary, renewing any such alterations or additions.

15. If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions, a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to the Company under this Schedule.

16. The undertaker shall repay to LUL all reasonable costs, charges and expense reasonably incurred by the Company—

- (a) in constructing any part of the specified works on behalf of the undertaker as provided by paragraph 7 above or in constructing any protective works under the provisions of paragraph 8 above, including in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably incurred by the Company in maintaining and renewing such works;
- (b) in respect of the employment or procurement of the services of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
- (c) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of the specified works, or from the substitution or diversion of services which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of the specified works; and
- (e) in respect of the supervision by the engineer of the construction of the specified works.

17. The undertaker shall be responsible for, and make good to LUL all reasonable costs, charges, damages and expenses not otherwise provided for in this Schedule which may be occasioned to, or reasonably incurred by, the Company—

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

and the undertaker shall indemnify the Company from and against all claims and demands arising out of or in connection with the construction of the specified works or any such failure, act or omission, and the fact that any act or thing may have been done in accordance with any requirement of the engineer or under his supervision, shall not (if it was not attributable to the act, neglect or default of the Company or of any person in its employ, or of its contractors or agents) excuse the undertaker from any liability under the provisions of this Schedule.

18.—(1) Any liability of the undertaker under paragraph 17 above shall be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the act, neglect or default of the Company or of any person in its employ, or of its contractors or agents.

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

19. Any difference arising between the undertaker and the Company under this Schedule shall be referred to and settled by arbitration under article 44 of this Order.