

SCHEDULES

SCHEDULE 11

Article 50

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS AND WATER UNDERTAKERS

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

(2) In this Part of this Schedule—

“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 an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(1)) belonging to or maintained by that undertaker; or
- (b) in the case of gas or water undertaker, any mains, pipes or other apparatus belonging to or maintained by such undertaker;

(not being, except in paragraph 2, apparatus in respect of which the relations between the Council and the undertakers are regulated by the provisions of Part 3 of the 1991 Act) and includes any structure for the lodging therein of apparatus or for giving access to apparatus;

“functions” includes powers and duties;

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

“plans” includes sections and method statements; and

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

(3) The provisions of Schedule 10 (provisions relating to statutory undertakers etc) to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

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

(1) 1989 c. 29.

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3.—(1) The Council, in the case of the powers conferred by article 16 (protective works to buildings) 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 and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of any undertaker or any interruption in the supply of electricity, gas or water, as the case may be, by that undertaker is caused, the Council shall bear and pay the cost reasonably incurred by the undertaker in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

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

by reason of any such damage or interruption.

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

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

5.—(1) If the Council, in the exercise of the powers of this Order, acquire any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part of this Schedule and any right of an undertaker to use, maintain, repair, renew, alter or inspect that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If the Council, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, requires the removal of any apparatus placed in that land, it shall give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed so as to provide alternative apparatus in lieu 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 requires to remove any apparatus) the Council shall, subject to sub-paragraph (3), afford to the undertakers the necessary facilities and rights for the construction of the alternative apparatus in other land of the Council and thereafter for the use, maintenance, repair, renewal, alteration and inspection of that apparatus.

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

(4) Any alternative apparatus to be constructed in land of the Council under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Council or in default of agreement settled by arbitration pursuant to article 54 (arbitration).

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

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

(7) Nothing in sub-paragraph (6) shall authorise the Council 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 Council affords to an undertaker facilities and rights for the construction, maintenance, repair, renewal and inspection in land of the Council 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 Council and the undertaker in question or in default of agreement settled by arbitration in accordance with sub-paragraphs (2) and (3).

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

- (a) give effect to all reasonable requirements of the Council for ensuring the safety and efficient operation of Translink 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 Council or the traffic on Translink; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus for which the alternative apparatus is to be substituted and have regard to the undertaker's ability to fulfil their service obligations.

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

7.—(1) Not less than 28 days before commencing to execute any works that are referred to in paragraph 5(2) and are near to or will or may affect any apparatus the removal of which has not been required by the Council under paragraph 5(2), the Council shall submit to the undertaker in question a plan, section and description of the works to be executed.

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

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

(4) If an undertaker within 21 days after the submission to them of a plan, section and description shall, in consequence of the works proposed by the Council, reasonably requires the removal of any apparatus and gives written notice to the Council of that requirement, the foregoing provisions of

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this Part of this Schedule shall apply as if the removal of the apparatus had been required by the Council under paragraph 5(2).

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

8. The Council shall not be required to comply with paragraph 7(1) in a case of emergency but in that case it shall give to the undertakers in question notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable thereafter and shall comply with paragraph 7(2) so far as reasonably practicable in the circumstances.

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

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

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

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest currently available type; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was, and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Council 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 undertaker in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

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

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

(4) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant, to sub-paragraph (2)) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.

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

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

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

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

(3) Any difference arising between the Council and the undertakers under this Part of this Schedule shall be referred to and settled by arbitration under article 54 (arbitration).

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

PART 2

PROTECTION OF PUBLIC COMMUNICATIONS PROVIDER

14.—(1) For the protection of a public communications provider the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the public communications provider affected have effect.

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15. The temporary stopping up or diversion of any highway under article 10 (temporary stopping up of streets) shall not affect any right of a public communications provider to inspect, maintain, adjust, repair or alter any apparatus which, at the time of the stopping up or diversion, is in that highway.

PART 3

PROTECTION FOR SEWERAGE UNDERTAKERS

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

(2) In this Part of this Schedule—

“attenuation tank” means the surface water attenuation tank located within the lands numbered 33 on the deposited plans for the Order in the District of South Bedfordshire;

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

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

“plan” includes sections and method statements;

“sewer” means a public sewer within the meaning of the Water Industry Act 1991 and includes a disposal main within the meaning of that Act and reference to a sewer shall include a reference to the attenuation tank; and

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

(3) The provisions of Schedule 10 (provisions relating to statutory undertakers etc.) to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

17.—(1) Before commencing the construction or renewal of any specified work, and in the case of any temporary work its removal, the Council shall submit to the undertaker plans of the work as described in sub-paragraph (3) and shall not commence that work until the undertaker has signified in writing its approval of those plans.

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

(a) may be given subject to reasonable conditions,

(b) shall not be unreasonably withheld, and

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

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

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

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

18.—(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, and the same may be amended from time to time by agreement between the Council and the undertaker, and in the construction or removal of the specified work the Council shall comply with all reasonable requirements of the undertaker and shall provide new, altered or substituted sewers or works for the protection of any sewers of the undertaker, in such manner as the undertaker may reasonably require by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such sewer by reason of any specified work.

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

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

19.—(1) Subject to the following provisions of this Part of this Schedule, the Council 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 respect of a 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, including for the avoidance of doubt any additional expense to which the undertaker should be put in gaining access to the attenuation tank in consequence of the specified works.

(2) The Council 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 Council, its contractors, agents, workmen or servants, whilst engaged upon any specified work and any new, altered or substituted sewer or any protective work.

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

(4) Nothing in sub-paragraph (1) or (2) shall impose any liability on the Council 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 Council, its contractors or agents.

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

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

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

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

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

(8) Sub-paragraphs (1) and (5) to (7) shall not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 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 Council and the undertaker in such proportions as may be prescribed by any such regulations.

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

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

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

(2) Where, in consequence of this Order, any part of any street, bridleway or footpath in which any sewer is 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 Council or of the undertaker to require alteration of such sewer under this Part of this Schedule.

22. The Council 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 sewer.

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

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

25. Any difference arising between the Council and the undertaker under this Part of this Schedule shall be referred to and settled by arbitration under article 54 (arbitration).

PART 4

PROTECTION FOR ENVIRONMENT AGENCY

26.—(1) For the protection of the Environment Agency (in this Part of this Schedule referred to as “the Agency”) the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the Agency, have effect.

(2) Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991 or any byelaws made under that Act or the Land Drainage Act 1991(2) in relation to anything done under or in pursuance of this Order.

(3) Before carrying out any works under the powers of this Order involving the erection or raising of any obstruction to the flow of any watercourse which is not part of a main river within the meaning of section 113 of the Water Resources Act 1991 or the construction, alteration or replacement of any culvert or any structure designed to contain or divert the flow for any such watercourse in, under or through any land held for the purposes of or in connection with Translink the Council shall furnish to the Agency proper and sufficient plans thereof for the approval of the Agency and shall not carry out the said works until the said plans have been approved in writing by the Agency.

(4) The approval of plans furnished under this paragraph shall not be unreasonably withheld and if, within two months of such plans being supplied to the Agency, the Agency does not indicate in writing its disapproval and the grounds of its disapproval, it shall be deemed to have approved the plans as supplied.

(5) For the purposes of this Part of this Schedule, “plans” includes sections, drawings, specifications, calculations and descriptions.

(6) Any culvert or any structure designed to contain or divert the flow of any watercourse situated within any land held for purposes of or in connection with Translink, whether constructed under the powers of this Order or in existence prior to the making thereof, shall be maintained by the Council in good repair and condition and free from obstruction.

(7) Nothing in this Part of this Schedule shall have the effect of requiring the Council to carry out works of maintenance in respect of any culvert or structure which the Agency or any other person are liable to maintain.

(8) If any obstruction is erected or raised or any culvert is constructed, altered or replaced in contravention of this Part of this Schedule the Council shall upon receiving notice from the Agency take such action as may be necessary to remedy the effect of the contravention to the Agency’s satisfaction and in default the Agency may itself take such action as may be necessary and recover the expenses reasonably incurred by it in doing so from the Council as a debt due from them to the Agency.

(2) 1991 c. 59.

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PART 5

PROTECTION FOR NETWORK RAIL INFRASTRUCTURE LIMITED

27.—(1) For the protection of Network Rail Infrastructure Limited, the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and Network Rail Infrastructure Limited, have effect.

(2) In this Part of this Schedule—

“authorised railways” means the railways of Network Rail Infrastructure between Luton station and Luton Airport Parkway railway station;

“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;

“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 Railways Act 1993⁽³⁾;

“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⁽⁴⁾) 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;

“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 Railways Act 1993) 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 railway network as a result of the construction or failure of a specified work or any such act or omission as mentioned in paragraph 38;

“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 Railways Act 1993.

⁽³⁾ 1993 c. 43.

⁽⁴⁾ 1985 c. 6.

28.—(1) Subject to paragraph (4), the Council shall not pursuant to the powers of this Order, without the consent of Network Rail Infrastructure Limited acquire or enter upon, take or use, whether temporarily or permanently or acquire any new rights over any railway property.

(2) The Council shall not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 10 (provisions relating to statutory undertakers etc) , 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) Where Network Rail Infrastructure Limited is asked to give its consent pursuant to sub-paragraph (1) and (2), such consent shall—

- (a) not be unreasonably withheld or delayed but may be given subject to reasonable conditions for the safe operation and maintenance of the authorised railways which do not interfere with the construction or maintenance of the specified works; and
- (b) be subject to compliance by Network Rail Infrastructure Limited with any relevant railway operational procedures.

Nothing in this Order shall prevent the Council pursuant to article 19 (power to acquire land) from acquiring the interest of any person other than Network Rail Infrastructure Limited in railway property.

29.—(1) The Council 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 56 days beginning with the date on which such plans have been supplied to Network Rail Infrastructure Limited the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail Infrastructure Limited, Network Rail Infrastructure Limited gives notice to the Council 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 authorised railways then, if the Council 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 the Council reasonably requires to be constructed in one operation with that work) with all reasonable dispatch on behalf of and to the reasonable satisfaction of the Council in accordance with the plans approved or deemed to be approved or settled under this paragraph and under the supervision (where appropriate and if given) of the Council.

(4) In the event of 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 the Council in accordance with such programme as may be agreed with the Council or settled by arbitration, Network Rail Infrastructure Limited shall pay compensation to the Council for any loss which it may sustain as a result.

(5) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the authorised railways 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 the Council, if Network Rail

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Infrastructure Limited so desires, with all reasonable dispatch and the Council shall not commence the construction of the specified works until the engineer has notified the Council that the protective works have been completed to his reasonable satisfaction.

30.—(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 as aforesaid;
- (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 authorised railways or the traffic thereon and the use by passengers of railway property,

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

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

31.—(1) The Council shall—

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

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

33.—(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 the Council reasonable notice of its intention specifying the alterations or additions to be carried out, the Council 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) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 34, provide such details of the formula by which those sums have been calculated as the Council may reasonably require.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against

any sum payable by the Council to Network Rail Infrastructure Limited under this Part of this Schedule.

34. The Council 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 the Council as provided by paragraph 29(3) or in constructing any protective works under the provisions of paragraph 29(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 the Council and the supervision by him of the construction of a specified work.

35.—(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 29(1) for the relevant part of the authorised works giving rise to EMI (unless the Council has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the Council 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 the Council’s compliance with sub-paragraph (3)—

- (a) the Council 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 29(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 the Council all information in Network Rail Infrastructure Limited’s possession reasonably requested by the Council in respect of Network Rail’s apparatus identified pursuant to paragraph (a); and
- (c) Network Rail Infrastructure Limited shall allow the Council reasonable facilities for the inspection of Network Rail’s apparatus identified pursuant to 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 29(1) shall have effect subject to this paragraph.

(6) If at any time prior to the commencement of regular revenue-earning train operations on the new authorised busway comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (3), the testing or commissioning of the authorised works causes

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EMI then the Council 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) the Council's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in subparagraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the Council shall afford reasonable facilities to Network Rail Infrastructure Limited for access to the Council's apparatus in the investigation of such EMI;
- (b) Network Rail Infrastructure Limited shall afford reasonable facilities to the Council for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail Infrastructure Limited shall make available to the Council any additional material information in its possession reasonably requested by the Council 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-paragraphs (5) or (6)—

- (a) Network Rail Infrastructure Limited shall allow the Council reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by the Council in accordance with paragraph 30.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 38(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 paragraph (6) applies.

(10) For the purpose of paragraph 34(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 54 (arbitration) to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

36. 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 the Council informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of railway property, the Council shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

37. The Council shall not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to 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 the railway.

38. 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 the Council, be repaid by the Council to Network Rail Infrastructure Limited.

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

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

and the Council shall indemnify 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 the Council or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Network Rail Infrastructure Limited or of any person in its employ or of its contractors or agents) excuse the Council from any liability under the provisions of this sub-paragraph.

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

(3) The sums payable by the Council under sub-paragraph (1) 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).

40. Network Rail Infrastructure Limited shall, on receipt of a request from the Council, from time to time provide the Council free of charge with written estimates of the costs, charges, expenses and other liabilities for which the Council is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 38 and with such information as may reasonably enable the Council to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part of this Schedule (including any claim relating to those relevant costs)).

41. In the assessment of any sums payable to Network Rail under this Part of 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 the Council under this Part of this Schedule or increasing the sums so payable.

42. The Council and Network Rail Infrastructure Limited may enter into, and carry into effect, agreements for the transfer to the Council of—

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

43. 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, shall—

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- (a) co-operate with the Council 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.

PART 6

PROTECTION FOR HIGHWAY AUTHORITIES

44.—(1) For the protection of the highway authorities concerned, the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the highway authority concerned, have effect.

(2) In this Part of this Schedule—

“highway” means a street vested in or maintainable by the highway authority;

“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;

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

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

(4) Prior to seeking approval under sub-paragraph (5), the Council shall consult the highway authority concerned as to any works to and changes in the management of the highway network which may be required to ensure the effective integration of the authorised busway with other forms of highway traffic and, within 28 days of being requested in writing by the Council so to do, the highway authority shall provide the Council with its opinion on the subject.

(5) Without prejudice to the application of sections 59 and 60 of the 1991 Act (duty of street authority to co-ordinate and undertakers to co-operate) before commencing any highway operations, the Council shall submit to the highway authority for its approval proper and sufficient plans and shall not commence the highway operations until such plans have been approved or settled by arbitration.

(6) If, within 56 days after any plans have been submitted to a highway authority under sub-paragraph (5), it has not intimated its disapproval and the grounds of disapproval, it shall be deemed to have approved them.

(7) In the event of any disapproval of plans by a highway authority under sub-paragraph (6), the Council may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 28 days of the plans being re-submitted, it shall be deemed to have approved them.

(8) In submitting plans under sub-paragraph (5), the Council shall—

(a) ensure that the design of any lighting for new station areas is such as not to cause confusion to highway users operating under normal highway lighting;

(b) ensure that the design and positioning of any poles and brackets required for overhead line equipment and the design of foundations, platforms, road islands, substations, electric lines

and other apparatus are compatible, so far as reasonably practicable, with street furniture vested in the highway authority; and

- (c) ensure that the design of any traffic signaling system for the authorised busway is fully compatible with traffic signaling for other traffic users whilst achieving priority signaling for guided buses using the authorised busway wherever practicable.

(9) Except in an emergency or where reasonably necessary to secure the safety of the public no direction or instruction shall be given by the highway authority to the contractors, servants or agents of the Council regarding the highway operations without the prior consent in writing of the Council.

(10) The highway authority 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 Part of this Schedule.

(11) To facilitate liaison with the Council, the highway authority concerned shall provide so far as is reasonably practicable a representative to attend meetings arranged by the Council respecting highway operations.

(12) So much of the authorised works as forms part of or is intended to become public highway, or part of any such highway, and which are not street works as respects which the provisions of Part 3 of the 1991 Act apply, shall be completed in accordance with the reasonable requirements of the highway authority or, in case of differences between the Council and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration.

(13) The Council shall not, except with the consent of the highway authority, alter or interfere with any 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 highway authority on or under any highway or repairable by them or the access thereto.

(14) The Council shall not, except with the consent of the highway authority, deposit any soil or materials or stand any vehicle or plant on or over any highway so as to obstruct or render less safe the use of the highway by any person or, except with the like consent, deposit any soil or materials on any highway except within a hoarding.

(15) The Council shall, if reasonably so required by the highway authority, provide and maintain during such time as the Council 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⁽⁵⁾ in such position as may be necessary to prevent undue interference with the flow of traffic in any highway.

(16) The Council shall not place any hoardings on any part of any highway except for such period and in such manner as may be reasonably necessary.

(17) The Council shall indemnify the highway authority against any claim which may arise as a result of any subsidence of, or damage to, any highway or any 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 highway authority on or under any highway, or maintainable by them, which may be caused by, or in consequence of, any act or default of the Council, its contractors, servants or agents.

(18) Unless otherwise agreed between the parties any difference arising between the Council and the highway authority under this Part of this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration.

(5) [S.I. 1994/1519](#).

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PART 7

FOR PROTECTION OF CERTAIN LAND NEAR JEANS WAY, LUTON

45.—(1) For the protection of certain land off Jeans Way, Luton the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Council and the authorities concerned, have effect.

(2) In this Part of this Schedule—

“local authority”, “parish council” and “designated land” have the same meanings as in article 19 (power to acquire land).

(3) The Council may enter into agreements with a local authority or a parish council for the carrying out by the Council and subsequent maintenance of any landscaping and ecological mitigation works to be undertaken on designated land.