

SCHEDULES

SCHEDULE 10

Article 56

PROTECTIVE PROVISIONS

PART 1

PROTECTION OF THE MANCHESTER SHIP CANAL COMPANY

1.—(1) For the protection of the Manchester Ship Canal Company the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and MSCC, have effect.

(2) In this Part of this Schedule—

“the Bridgewater Canal” means the Bridgewater Canal owned or managed by MSCC or the Bridgewater Canal Company Limited, and includes any works connected with the Bridgewater Canal for the maintenance or operation of which MSCC is responsible and lands held or used by MSCC for the purposes of the Bridgewater Canal;

“the Canals” means the Bridgewater Canal and the Ship Canal;

“construction”, in relation to any specified work or protective work, includes execution, placing, altering, replacing, relaying and removal, and “construct” and “constructed” have corresponding meanings;

“deputy harbour master” means the deputy harbour master appointed by MSCC for the purpose in question;

“detriment” means any physical damage to the Canals wholly or partly caused by the specified works which affects the stability, structure and safety of the Canals and, without limiting the scope of that meaning, includes—

- (a) the erosion of the bed, banks or walls of the Canals, or the impairment of the stability of any works or lands forming part of the Canals;
- (b) damage to the wall of the Ship Canal caused by excessive weight being placed on the Ship Canal wall;
- (c) the silting of the Canals or the deposit of materials in the Canals so as to damage the Canals;
- (d) the pollution of the Canals; and
- (e) any alteration in the water level of the Canals, or interference with the supply of water to the Canals, or drainage from the Canals;

“the engineer” means an engineer (whether an employee of MSCC or external consultant) appointed by MSCC for the purpose in question;

“exclusion zone” means an area of land extending 20 metres landwards from either bank of the Ship Canal and an area of land extending 3 metres landwards from either bank of the Bridgewater Canal;

“MSCC” means the Manchester Ship Canal Company and its statutory successors;

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“plans” includes sections, drawings, specifications, calculations, soil reports, descriptions (including descriptions of methods of construction), risk assessments and method statements but shall not include the design and appearance of the specified works;

“protective work” means a work which is reasonably necessary to be carried out to minimise or prevent detriment constructed under sub-paragraph 5(3)(a);

“the Ship Canal” means the Manchester Ship Canal owned and managed by MSCC, and includes any works connected with the Ship Canal for the maintenance or operation of which MSCC is responsible and lands held or used by MSCC for the purposes of the Ship Canal;

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

“weight limit” means the relevant weight limit for any section of the wall of the Ship Canal that may be affected by any specified work or protective work such weight limit to be approved by the engineer in accordance with the provisions of paragraph 5.

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

3. The undertaker shall not under the powers conferred by this Order construct in the exclusion zone any bridge piers (and their foundations) to support an approach viaduct to the new bridge except with the written agreement of MSCC which may be withheld by MSCC at its absolute discretion.

4. Where so required by the engineer for the purpose of ensuring the safety of the Canals the undertaker shall, to the reasonable satisfaction of the engineer, fence off any specified work or protective work or take such steps as the engineer may reasonably require to be taken for the purpose of separating a specified work or a protective work from the Canals, whether on a temporary or permanent basis or both.

5.—(1) The undertaker shall, before commencing construction of any specified work, including any temporary works, supply to MSCC proper and sufficient plans of that work and such further particulars available to it as MSCC may within 14 days of the submission of the plans reasonably require for the reasonable approval of the engineer and shall not commence the construction of any specified work 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 within 42 days after such plans (including any other particulars reasonably required under sub-paragraph (1)) have been supplied to MSCC the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer shall be deemed to have approved the plans as submitted.

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

- (a) any protective work to be carried out before the commencement of a specified work (whether temporary or permanent) that may be reasonably required to prevent detriment; and
- (b) such other requirements as may be reasonably necessary to prevent detriment but not involving alteration to the basic design of the specified works,

and such protective work shall be constructed by the undertaker or (if the undertaker so elects) MSCC without unnecessary delay and the undertaker shall not commence the construction of any specified work until the engineer has notified the undertaker that the protective work has been completed to the engineer’s reasonable satisfaction.

(4) The approval of the engineer under sub-paragraph (3) shall not be unreasonably withheld or delayed, and if by the end of the period of 14 days beginning with the date on which the engineer is notified of the completion of such protective work the engineer has not intimated disapproval and the grounds of disapproval the engineer shall be deemed to have approved the protective work.

(5) MSCC shall at all times afford reasonable facilities to the undertaker and its agents for access to any protective works carried out by MSCC under this paragraph during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such protective works or the method of constructing them.

6. The undertaker shall not impede, obstruct or interfere with, as far as reasonably practicable, the free and uninterrupted and safe use of the Canals or the vessels on the Canals except to the extent that the obstruction or interference has otherwise been agreed by MSCC.

7. The undertaker shall provide and maintain at its own expense in the vicinity of any specified work or protective work such temporary lighting from sunset to sunrise or other periods of adverse visibility and such signal lights for the control of navigation as the deputy harbour master may reasonably require during the construction or failure of the specified work or protective work.

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

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled by arbitration and with any requirements made under sub-paragraph 5(3)(b);
- (b) under the supervision (if given), and in the case of any specified work which directly and physically affects the Canals, to the reasonable satisfaction of the engineer;
- (c) in such a manner as to cause as little detriment as is reasonably practicable to the Canals;
- (d) in such a manner as to cause no detriment to the walls of the Canals;
- (e) so far as is reasonably practicable, so as not to interfere with, delay or obstruct the safe passage of vessels using the Canals except to the extent that such interference, delay or obstruction has otherwise been agreed by MSCC; and
- (f) in such a manner as to cause as little inconvenience as is reasonably practicable to MSCC, its officers and agents.

(2) Nothing in this Order shall authorise the undertaker to make or maintain any permanent works in or over the Canals so as to impede or prevent (whether by reducing the headroom or depth of water available for vessels, or the width of the Canals or otherwise) the passage of any vessel along the Canals (unless otherwise agreed in writing by MSCC) such that—

- (a) the minimum permanent vertical clearance over the Ship Canal will be maintained at all times at 28.63 metres Above Ordnance Datum and the existing permanent minimum width of the Ship Canal will be maintained at all times at 40 metres; and
- (b) the minimum permanent vertical clearance over the Bridgewater Canal will be maintained at all times at 5 metres over the normal water level of 25.260 metres Above Ordnance Datum and the existing permanent minimum width of the Bridgewater Canal will be maintained at all times at 5 metres.

(3) Nothing in this Order shall authorise the undertaker to—

- (a) construct or maintain any specified work or protective work which would result in the weight limit of the Ship Canal wall being exceeded; or
- (b) use the Ship Canal wall as a load bearing wall or structure for any specified work or protective work.

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(4) Nothing in this Order shall authorise the undertaker to construct any specified work or make or maintain any permanent works in the Bridgewater Canal which would impede the free-flow of water in the Bridgewater Canal.

(5) Following the completion of the construction of any specified work the undertaker shall restore the Canals to a condition no less satisfactory than their condition immediately prior to the commencement of those works subject to the presence of the new bridge.

9.—(1) The undertaker shall not in the course of constructing any specified work or protective work or otherwise in connection with such works do or permit anything which may result in the deposit of any polluting materials on, in or over the Canals and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

(2) Nothing in article 14 (discharge of water) shall authorise the undertaker to discharge (directly or indirectly) surface drainage water into the Canals save that with the written consent of MSCC the undertaker may discharge water directly into the Ship Canal only.

(3) The undertaker shall not in the course of constructing any specified work or protective work or otherwise in connection with such works do or permit anything which may result in the deposit of any other materials in the Canals and shall take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph save that with the written consent of MSCC the undertaker may deposit any other materials into the Ship Canal only.

(4) Any consent of MSCC required under this paragraph shall not be unreasonably withheld or delayed and may be given subject to such terms and conditions as MSCC may reasonably require including—

- (a) in the case of a discharge of water into the Ship Canal, concerning the reimbursement by the undertaker of expenses incurred by MSCC in disposing of the water so discharged, being expenses which MSCC would not have incurred but for the discharge;
- (b) in the case of a deposit of any other materials, so as to ensure that the use of the Ship Canal is not obstructed or rendered less safe and the reimbursement by the undertaker of additional expenses incurred by MSCC in dredging the Ship Canal, being expenses which MSCC would not have incurred but for the deposit of other materials.

10.—(1) The undertaker shall at all reasonable times on being given reasonable notice (except in cases of emergency) allow reasonable facilities to the engineer for access to inspect any specified work during its construction.

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

11.—(1) If any reasonable alterations or additions, either permanent or temporary, to the Canals are necessary in consequence of the construction of the specified work in order to avoid detriment and MSCC gives to the undertaker reasonable notice (being not less than 28 days) of its intention to carry out such alterations or additions (which shall be specified in the notice), and takes into account any reasonable representations the undertaker may make to the notice within 21 days of receipt of the notice, the undertaker shall pay to MSCC, provided that 28 days' notice has been given to the undertaker, the cost of those alterations or additions reasonably incurred including, in respect of permanent alterations and additions, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by MSCC in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the Canals is reduced as a consequence of any such alterations or additions referred to in sub-paragraph (1) a capitalised sum representing such saving shall be set off against any sum payable by the undertaker to MSCC under sub-paragraph (1).

12.—(1) The undertaker shall, upon completion of any part of a specified work and after the purpose of any temporary works has been accomplished, remove as soon as practicable any temporary works constructed and materials for temporary works placed in, on or over the Canals in connection with that part of the specified work.

(2) All temporary works shall be removed to the reasonable satisfaction of the engineer and in such a way as causes as little detriment or interference as reasonably practicable with, or delay or interruption to, the safe passage of vessels along the Canals.

(3) In the event of any detriment to the Canals or interference with, or delay or interruption to, any vessels on the Canals that is caused by the undertaker's failure to remove any such temporary works, the undertaker shall immediately make good such damage and pay to MSCC the costs and expenses to which it may be put and the compensation for any loss which it may suffer by reason of such detriment, interference, delay or interruption.

(4) In the event of the undertaker failing to remove the temporary works within a reasonable period after receiving notice from MSCC, MSCC may remove the same and charge the undertaker with the reasonable costs and expenses reasonably incurred as a result.

13.—(1) Following the completion of any specified work and any protective work the undertaker and MSCC shall co-operate with each other on the development of a maintenance schedule for the new bridge to reflect, where possible, the maintenance requirements of the undertaker with regards to the new bridge and the operational requirements of MSCC in managing the Ship Canal.

(2) The undertaker and the deputy harbour master shall jointly review the maintenance schedule on a twice yearly basis (on a date to be agreed between the parties) and, acting reasonably, shall agree what reasonable actions (if any) need to be taken to revise the maintenance schedule.

(3) The undertaker shall, before placing any temporary structure or apparatus over the Ship Canal required in connection with the maintenance or repair of the new bridge or renewal of a specified work, comply with the reasonable requirements of MSCC, such requirements to include—

- (a) the undertaker providing MSCC with 42 days' written notice of this requirement so that, in particular, MSCC may bring these works to the attention of users of the Ship Canal;
- (b) receiving approval from the deputy harbour master in accordance with the maintenance schedule, which approval shall not be unreasonably withheld or delayed in any event; and
- (c) any temporary structure or apparatus being capable of being moved within 45 minutes of the undertaker being instructed to do so by the deputy harbour master to allow the safe movement of vessels along the Ship Canal.

(4) In the case of repair work carried out in an emergency the undertaker shall only be required to give such notice to the deputy harbour master as may be reasonably practicable in the circumstances.

14. If as a result of the construction of any specified work or protective work any part of the towing path or access way beside the Bridgewater Canal, or any public right of way giving access to the Bridgewater Canal, is temporarily closed to pedestrians or cyclists, the undertaker shall provide a substitute path or paths for such time as the closure continues to the satisfaction of the relevant highway authority and MSCC and shall reinstate, on completion of the specified work or protective work, to the same standard and to the satisfaction of the relevant highway authority and MSCC the towing path or access way beside the Bridgewater Canal (such towing path or access way to be of no less width or benefit than the towing path or access way replaced).

15. If at any time after the completion of a specified work, not being a work vested in MSCC, MSCC give notice to the undertaker informing it that the state of maintenance of the specified work appears to be such that the specified work is causing or is likely to cause detriment, the undertaker shall, on receipt of such notice, take such steps as may be reasonably necessary to put the specified work in such state of maintenance as not to cause such detriment and if the undertaker fails to do so, MSCC may make and do in and upon the land of the undertaker or MSCC all such works to put the

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specified work in such state of maintenance as before and the cost, expenses and losses incurred by MSCC in so doing shall be repaid to MSCC by the undertaker.

16. Any reasonable and proper additional expenses not otherwise provided for in this Part of this Schedule which MSCC may incur in maintaining the Canals under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 42 days' notice of the commencement of such maintenance has been given to the undertaker, be repaid by the undertaker to MSCC.

17. Before providing any illumination or illuminated traffic sign on or in connection with the specified work or in the vicinity of the Canals, the undertaker shall consult with MSCC and comply with MSCC's reasonable requirements in regard to such lighting with a view to ensuring that—

- (a) appropriate navigation lighting will be placed on the new bridge; and
- (b) any bridge illuminations will not be directed upstream or downstream into the path of oncoming vessels on the Canals to ensure that such illumination or illuminated signs can not be confused with any lights or lighting used for controlling, directing or securing the safety of vessels on the Canals.

18.—(1) If any canal work is abandoned, and is in such a condition that it is, or is likely to become, a danger to or to interfere with navigation, MSCC may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice to remove the work and (to such extent as MSCC reasonably requires) to restore the site to its former condition.

(2) If any canal work is in such condition that it is, or is likely to become, a danger to or to interfere with navigation, MSCC may by notice in writing require the undertaker to take such reasonable steps as may be specified in the notice—

- (a) to repair and restore the work or part of it; or
- (b) if the undertaker so elects, to remove the work and (to such extent as MSCC reasonably requires) to restore the site to its former condition.

(3) If—

- (a) a work which consists of a canal work and a non-canal work is abandoned or falls into decay; and
- (b) the non-canal work is in such a condition as to interfere with the right of navigation in the Canals or as to interfere with the rights of access or use of land adjacent to the Canals,

MSCC may include the non-canal work, or any part of it, in any notice under this paragraph.

(4) If after such reasonable period as may be specified in a notice under this paragraph the undertaker has failed to begin taking steps to comply with the requirements of the notice or after beginning has failed to make reasonably expeditious progress towards their implementation, MSCC may carry out the works specified in the notice and any costs incurred by MSCC in so doing shall be recoverable from the undertaker.

(5) In this paragraph “canal work” means so much of any specified work or any other work of which the undertaker is in possession under the powers conferred by this Order as is in or over the Canals and “non-canal work” means so much of any such work as is not in or over the Canals.

19. The undertaker shall repay to MSCC all costs, charges and expenses reasonably and properly incurred by MSCC—

- (a) in constructing any protective work under the provisions of paragraph (5)(3)(a) including, in respect of any permanent protective work, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the employment of any inspectors, watchguards and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any part of

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the Canals affected by any specified work or protective work and for preventing as far as may be practicable all interference, obstruction, danger or accident arising from the construction, maintenance, renewal, repair or failure of the specified work or any protective work;

- (c) in respect of any special navigation or traffic procedures resulting from any restrictions which are necessary as a result of the construction, maintenance, renewal, repair or failure of the specified work and which may in the reasonable opinion of the engineer be required to be imposed or from the suspension of navigation or traffic which may be necessary for the same reasons;
- (d) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of any specified work or any protective work; and
- (e) in bringing the specified work or any protective work to the notice of users of the Canals.

20.—(1) If any detriment to the Canals or any interference with, or delay or obstruction to, any vessels on the Canals is caused by, or arises as a result of, the construction or failure of any specified work or protective work if carried out by the undertaker, the undertaker or (if MSCC so elects) MSCC, but at the undertaker's expense, shall immediately make good such detriment and the undertaker shall on demand pay to MSCC all reasonable expenses to which MSCC may be put, and compensation for any loss which MSCC may sustain, in making good or otherwise by reason of any such detriment, interference, delay or obstruction.

(2) The undertaker shall be responsible for and make good to MSCC all claims, demands, proceedings, costs, charges, damages, expenses and losses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by MSCC—

- (a) by reason of the construction or failure of any specified work or a protective work;
- (b) by reason of any planned closure of the Canals, as a result of the construction or failure of any specified work or a protective work, or of any closure which is not in accordance with the provisions of this Part of this Schedule;
- (c) by reason of any planned closure of the Canals over-running, as a result of the construction or failure of any specified work or a protective work; and
- (d) 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 any specified work or of a protective work,

and subject to sub-paragraph (4) the undertaker shall effectively indemnify and hold harmless MSCC from and against all charges, claims, demands, expenses and liabilities arising out of any of the matters referred to in paragraphs (a), (b), (c) and (d).

(3) Nothing in this paragraph shall impose any liability on the undertaker with respect to any losses, costs, charges, damages, expenses, claims or demand referred to in sub-paragraph (2) to the extent that they are attributable to negligence on the part of MSCC or of any person in their employ or their contractors or agents.

(4) The fact that any act or thing may have been done by MSCC on behalf of the undertaker or in accordance with any requirements of the engineer or in accordance with plans approved by the engineer or under the engineer's supervision or awards of an arbitrator shall not (if it was done without negligence on the part of MSCC or any person in its employ or its contractor or agents) excuse the undertaker from any liability under the provisions of this paragraph.

(5) MSCC shall give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand shall be made without the prior consent in writing of the undertaker (which shall not be unreasonably withheld) which, if it notifies MSCC that it desires to do so, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand provided that no settlement or compromise of any such claim

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or demand shall be made without the consent of MSCC (which shall not be unreasonably withheld). If consent is not given by the undertaker, MSCC shall diligently defend such claim or demand.

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

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

23. Any differences arising between the undertaker and MSCC under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration in accordance with article 62 (arbitration).

PART 2

PROTECTION OF THE MERSEY DOCKS AND HARBOUR COMPANY

24.—(1) For the protection of the Mersey Docks and Harbour Company the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and MDHC, have effect.

(2) In this Part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying and removal, and “construct” and “constructed” shall have corresponding meanings;

“IALA” means International Association of Lighthouse Authorities;

“MDHC” means the Mersey Docks and Harbour Company (in its capacity as the navigation authority for the River Mersey);

“specified work” means so much of the authorised works as is constructed in, on, over or under so much of the River Mersey as is within the limits of the Mersey Docks and Harbour Company (as defined in section 2 of the Mersey Docks and Harbour Act 1971(1)), or involves cutting its banks and walls; and

“the River” means the River Mersey.

25. Before commencing construction or maintenance of any specified work associated with the construction of the new bridge or ongoing maintenance of the new bridge post construction of the specified work associated with the construction of the new bridge, the undertaker shall give to MDHC 56 days’ written notice before construction equipment or temporary structures are placed in the River.

26.—(1) The undertaker shall ensure, during the whole period of the construction of the specified work associated with the construction of the new bridge, that any temporary structures required for the construction of the three towers to support the new bridge will be lit at all times in accordance with IALA requirements.

(2) The undertaker shall ensure that, after construction, the three towers supporting the new bridge will be lit at all times in accordance with IALA requirements.

27.—(1) If any specified work is abandoned or falls into decay, MDHC may by notice in writing require the undertaker either to repair or to restore the specified work, or any part of it, or to remove

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the specified work and restore the site of that work to its condition prior to the construction of the specified work, to such an extent and to such limits as MDHC thinks proper acting reasonably.

(2) If a work consisting partly of a specified work and partly of works on or over land above the level of high-water spring tides is abandoned or falls into decay and that part of the works on or over land above the level of high-water spring tides is in such a condition as to interfere or cause reasonable apprehension that it may interfere with navigation on the River or other public rights over the foreshore, MDHC may include that part of the works or any portion in any notice under sub-paragraph (1).

(3) If on the expiration of such reasonable period as may be specified in a notice under sub-paragraph (1) the work specified has not been completed to the satisfaction of MDHC, MDHC may undertake that work and any expenditure reasonably incurred by it in doing so shall be recoverable from the undertaker.

28. Any differences arising between the undertaker and MDHC under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration in accordance with article 62 (arbitration).

PART 3

PROTECTION FOR THE ENVIRONMENT AGENCY

General

29. For the protection of the Agency, the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the Agency, have effect.

Interpretation

30. In this Part of this Schedule—

“accumulation” means any accumulation of silt or other material;

“the Agency” means the Environment Agency;

“completion” in relation to a work means the date on which it is brought into use;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” shall have corresponding meanings;

“drainage work” means any watercourse and any bank, wall, embankment of the River Mersey or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring, and includes any land which, taking account of flood defences, is expected to provide flood storage capacity for any watercourse at intervals not less frequent than—

(a) in the case of areas providing fluvial flood storage, once in 100 years; and

(b) in the case of areas providing tidal or coastal flood storage, once in 200 years;

“erosion” means any erosion of the bed or shore of the sea or the bed or banks of the River Mersey;

“excluded work” means Work Numbers 1a, 1b, 1c, 1d, 1e, 1f, 2a, 2b, 3a, 3b, 4h, 4i, 4j, 5a, 5b, 5c, 5d, 5e, 5f, 5g and 5h;

“the fishery” means the River Mersey and fish in, or migrating to or from, the River Mersey and the spawn, habitat or food of such fish;

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

“River Mersey” means the River Mersey and its tributaries within the Order limits;

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“specified work” means so much of any permanent or temporary work or operation authorised by this Order (including, for the avoidance of doubt, any dredging and any geotechnical investigations that may be undertaken) as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (c) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (d) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (e) cause obstruction to the free passage of fish or damage to any fishery; or
- (f) affect the conservation, distribution or use of water resources;

and reference to protection of or damage to a drainage work includes reference to the protection of or damage to the drainage work as a natural resource or in respect of the effects of that drainage work on the environment.

Plan approval

31.—(1) Before beginning to construct any specified work other than an excluded work, the undertaker shall submit to the Agency plans of the work and such further particulars available to it as the Agency may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work other than an excluded work shall not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 42.

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

- (a) shall not be unreasonably withheld;
- (b) shall be deemed to have been given if it is neither given nor refused in writing and, in the case of a refusal, accompanied by a statement of the grounds for refusal, within 2 months of the submission of the plans for approval; and
- (c) may be given subject to such reasonable requirements as the Agency may impose—
 - (i) for the protection of any drainage work;
 - (ii) for the protection of the fishery;
 - (iii) for the protection of water resources;
 - (iv) for the prevention of flooding;
 - (v) for the prevention of water pollution; or
 - (vi) for the discharge of its environmental and recreational duties.

32. Without limiting the scope of paragraph 31, the requirements which the Agency may make under that paragraph include—

- (a) conditions as to the time and the manner in which any other work or operation is to be carried out;
- (b) conditions requiring the undertaker at its own expense—
 - (i) to provide or maintain means of access for the Agency;
 - (ii) to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary to safeguard any drainage work against damage or to secure that its efficiency for flood defence purposes is

not impaired and that the risk of flooding is not otherwise increased by reason of any specified work;

- (iii) to monitor accumulation, erosion or alterations of the tidal flow arising during the construction, or for 5 years following the completion, of the specified works; and
- (iv) to provide, maintain and operate arrangements for dealing with any pollution incidents which may occur during and as a result of the construction of the specified works.

Construction of works

33.—(1) Subject to sub-paragraph (2), any specified work other than an excluded work, and all protective works required by the Agency under paragraph 32, shall be constructed—

- (a) within such period (if any) as the Agency may approve at the time of approval or upon an application by the undertaker subsequently (such approval not to be unreasonably withheld);
- (b) in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (c) to the reasonable satisfaction of the Agency,

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

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

(3) If any part of a specified work other than an excluded work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the Agency reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing shall be recoverable from the undertaker.

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

Liability for damage to tidal and fluvial regimes

34.—(1) If, during the construction of any specified work, or within 5 years after the completion of such work, there is caused or created an accumulation or erosion or an alteration to tidal flow or littoral drift which in whole or in part is reasonably attributable to the construction of such work and which causes damage or reasonable expectation of damage, the undertaker shall, if so required by the Agency before or within the period of 5 years after such completion and to the extent that it is so attributable, remedy such accumulation or erosion or alteration to tidal flow or littoral drift in the manner specified in sub-paragraph (4) and, if it refuses to do so, the Agency may itself cause such remedy to be carried out and may recover the reasonable cost of so doing from the undertaker.

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(2) Should an accumulation or erosion or alteration of tidal flow or littoral drift which in whole or in part is reasonably attributable to the construction of the specified works arise which causes such damage or reasonable expectation of damage within the said period of 5 years and be required to be remedied in accordance with sub-paragraph (1), any continuation or recurrence of such accumulation or erosion or alteration of tidal flow or littoral drift shall to the extent that it is reasonably attributable to the construction or operation of any specified work be so remedied by the undertaker during the said period of 5 years and at any time subsequently, save that the undertaker's obligation under this sub-paragraph shall cease in the event that following the remedying of any accumulation or erosion or alteration of tidal flow or littoral drift a period of 5 years elapses without any further accumulation or erosion or alteration of tidal flow or littoral drift reasonably attributable to the construction of the specified works.

(3) In sub-paragraphs (1) and (2) and in paragraph 37 "damage" means, in the context of damage to flood defence capability or operation, any damage affecting the following—

- (a) the efficacy of flood defences;
- (b) the bed or banks of a river; or
- (c) the structure or operation of any outfall, flood or sea defences or any jetty or other structure under the jurisdiction of the Agency for the purposes of the Water Resources Act 1991(2).

(4) For the purposes of sub-paragraphs (1) and (2)—

- (a) in the case of an accumulation, the remedy shall be its removal or such protective works or measures as may reasonably be required by the Agency; and
- (b) in the case of erosion or alteration of tidal flow or littoral drift, the remedy shall be the carrying out of such reconstruction works and protective works or measures as may reasonably be required by the Agency.

(5) To the extent that the undertaker establishes by surveys, inspections, tests or sampling that such accumulation or erosion or alteration of tidal flow or littoral drift referred to in sub-paragraph (1) or (2) would have been caused in any event by factors other than the construction or operation of a specified work, the undertaker shall not be liable to remedy such accumulation or erosion or alteration of tidal flow.

(6) In carrying out any surveys, inspections, tests or sampling under sub-paragraph (5) the undertaker shall not unreasonably delay the execution of any remedial action required under sub-paragraph (1) or (2).

Prior survey of drainage works

35. Before commencing the construction of a specified work the undertaker shall procure at its own expense, in liaison with and to the reasonable satisfaction of the Agency, a survey of any drainage work liable to be affected by the specified work.

Maintenance by undertaker of drainage works

36.—(1) Subject to sub-paragraph (2), the undertaker shall, from the commencement of the construction of the specified works until their completion and except to the extent that any approval given by the Agency under this Part of this Schedule permits otherwise, maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land owned by the undertaker or which it otherwise has control of or is in occupation of for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) The obligation imposed on the undertaker under sub-paragraph (1) does not apply where the Agency or another person is liable to maintain any such work and is not precluded by the exercise of the powers conferred by this Order from doing so.

(2) 1991 c. 57.

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

(4) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any work is served under sub-paragraph (3) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and not subsequently made reasonably expeditious progress towards their completion, the Agency may carry out the measures specified in the notice and may recover any expenditure reasonably incurred by it in doing so from the undertaker.

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

Impairment of efficiency of and damage to drainage works

37.—(1) If, by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so within such reasonable period as the Agency may require by notice in writing to the undertaker, the Agency may make good the same and recover from the undertaker the expense reasonably incurred by it in doing so.

(2) If such impaired or damaged drainage work is not made good to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the work to its former standard of efficiency or where necessary to construct some other work in substitution for it.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any impaired or damaged drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their completion, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in doing so from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (1), the Agency shall not, except in a case of emergency, exercise its powers to make good the drainage works until the dispute has been finally determined.

Protection of the fishery

38.—(1) The undertaker shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

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(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the undertaker the expense reasonably incurred by it in doing so.

(4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker the expenses reasonably incurred by it in doing so provided that written notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Indemnity in respect of particular expenses incurred by Agency under this Part of this Schedule

39. The undertaker shall indemnify the Agency in respect of all reasonable and proper costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; or
- (b) in the inspection, for the purposes of compliance with this Part of this Schedule, of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule.

General indemnity by the undertaker

40.—(1) Without prejudice to the other provisions of this Part of this Schedule, the undertaker shall indemnify the Agency from all claims, demands, proceedings, costs, damages, expenses or loss which may be made or taken against, or recovered from or incurred by, the Agency by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence; or
- (b) any damage to the fishery in so far as it has not already been compensated; or
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses; or
- (d) any flooding or increased flooding of land adjoining the authorised works; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

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

(2) The Agency shall give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the undertaker which agreement shall not be unreasonably withheld, and if such agreement is not given by the undertaker, the Agency shall diligently defend such claim or demand.

(3) Prior to incurring any expense which it may seek to recover under this paragraph, the Agency shall serve a written notice on the undertaker informing it of the Agency's intentions and requiring it within such time as the Agency may reasonably specify to take such steps as may be reasonably practicable to avoid the need for the Agency to incur such costs.

(4) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not (in the absence of negligence on the part of the Agency, its officers, contractors or agents) relieve the undertaker from any liability under this paragraph.

Dispute resolution

41.—(1) For the purposes of Chapter 2 of Part 2 of the Water Resources Act 1991 (abstraction and impounding of water) and section 109 of that Act (as to structures in, over or under watercourses) as applying to the construction of any specified work, any consent or approval given or deemed to be given by the Agency under this Part of this Schedule with respect to such construction shall be deemed also to constitute an impounding licence under that Chapter or, as the case may be, a consent or approval under that section.

(2) Section 23 of the Land Drainage Act 1991⁽³⁾ (prohibition on obstructions, etc. in watercourses) and any byelaws made under that Act or under the Water Resources Act 1991 shall not apply to anything done under or in pursuance of this Order.

42. Any dispute arising between the undertaker and the Agency under this Part of this Schedule (other than a difference as to its meaning or construction) shall, if the parties agree, be determined by arbitration under article 62 (arbitration), but shall otherwise be determined by the Secretary of State for Environment, Food and Rural Affairs and the Secretary of State for Transport acting jointly on a reference to them by either party after notice in writing to the other.

43. Nothing in paragraphs 37(1) and 40(1) shall impose any liability on the undertaker in respect of accumulation or erosion or alteration of the tidal flow or littoral drift other than such accumulation or erosion or alteration of the tidal flow or littoral drift which the undertaker is liable to remedy under paragraph 34(1) or (2).

PART 4

PROTECTION OF THE MERSEY CONSERVANCY

General

44. For the protection of the Mersey Conservancy and the users of the River Mersey, the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the Secretary of State for Transport, have effect.

Interpretation

45. In this Part of this Schedule—

“ACRM” means the Acting Conservator of the River Mersey, or, if no person holds that office, the Secretary of State for Transport;

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

“plans” includes sections, elevations, drawings, specifications and programmes and construction methods including where applicable, such relevant hydraulic information about the River Mersey as may be reasonably requested by the ACRM.

Tidal work

46.—(1) The undertaker shall not commence any tidal work until—

(a) it has supplied to the ACRM proper and sufficient plans of that work and such further particulars as the ACRM may within 14 days of the submission of the plans reasonably require; and

(b) those plans have been approved in writing by the ACRM.

(2) A tidal work must not be constructed except in accordance with such plans as have been approved in writing by the ACRM, such approval not to be unreasonably withheld or delayed.

(3) 1991 c. 59.

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(3) If, within 42 days after such plans and any other particulars reasonably required under sub-paragraph (1)(a) have been supplied to the ACRM, the ACRM does not notify the undertaker of approval or disapproval of those plans, the ACRM is to be deemed to have disapproved of the plans or such part of the plans as is not approved.

(4) The approval of such plans may include conditions that—

- (a) specified protective work be carried out before the commencement of a tidal work (whether temporary or permanent), if that protective work is reasonably required to prevent detriment to vessel movement on, or the flow or regime of, the River Mersey; and
- (b) other things, not including alteration to the basic design of the works, be done or omitted in order to prevent detriment to vessel movement on, or the flow or regime of, the River Mersey.

(5) The undertaker—

- (a) must comply with all such conditions; and
- (b) must not commence construction of the relevant tidal work until the ACRM has notified the undertaker in writing that any protective work has been completed to the ACRM's reasonable satisfaction.

(a) (6) (a) The undertaker must carry out all operations for the construction or maintenance of any tidal works so that vessel movement on, or the flow or regime of, the River Mersey and the exercise of the ACRM's statutory functions do not suffer more interference than is reasonably practicable.

(b) The ACRM may at all reasonable times, on giving such notice as may be reasonable in the circumstances, inspect and survey such operations.

(a) (7) (a) If any tidal work is constructed otherwise than in accordance with—

- (i) the requirements of this Part of this Schedule; or
- (ii) with any condition in an approval pursuant to sub-paragraph (1),

the ACRM may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or that condition.

(b) If the undertaker does not comply with that notice, or is unable to do so, within a reasonable period specified in the notice, the ACRM may in writing require the undertaker to remove, alter or pull down the tidal work and, where the tidal work is removed or pulled down, to restore the site of that work to its condition prior to the construction of the tidal work to such an extent and within such limits as the ACRM may think proper.

(8) Upon completion of the construction or maintenance of an authorised work, the undertaker must—

(a) remove as soon as is practicable any temporary tidal works and materials for such temporary tidal works, carried out or placed only for the purposes of that part of the authorised work; and

(b) make good the site to the reasonable satisfaction of the ACRM.

(9) The undertaker must not—

(a) deposit in or allow to fall or be washed into the River Mersey any gravel, soil or other material except to the extent permitted by any approval of a tidal work;

(b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise; or

(c) discharge into the river any water by any watercourse, public sewer or drain without the consent of the ACRM, who may impose such terms and conditions as may be reasonable but must not unreasonably withhold consent.

(10) The undertaker shall (subject to sub-paragraph (11)) remove from the River Mersey any pile, stump or other obstruction which becomes exposed in consequence of the construction of a tidal work.

(11) If it is not reasonably practicable to remove a pile, stump or other obstruction, the undertaker must cut it off at such level below the bed of the River Mersey as the ACRM may reasonably direct.

(12) If the undertaker fails to remove or cut off (as the case may be) any pile, stump or other obstruction pursuant to sub-paragraphs (10) and (11) within a period of 28 days beginning with the date of receipt of a written notice from the ACRM requiring its removal or cutting off, the ACRM may carry out the removal or cutting off and recover the cost of doing so from the undertaker.

(a) (13) (a) If a tidal work is abandoned or falls into decay, the ACRM may by notice in writing require the undertaker—

(i) to repair or restore the tidal work, or any part of it; or

(ii) to remove the tidal work and restore the site of that work to its condition prior to the construction of the tidal work.

(b) In that notice the ACRM may—

(i) prescribe a reasonable period for compliance; and

(ii) prescribe such extent and such limits for the restoration as the ACRM thinks proper.

(14) If—

(a) a work consisting partly of a tidal work and partly of works (“the land works”) on or over land above the level of high-water spring tides is abandoned or falls into decay; and

(b) the land works are in such condition as to interfere or cause reasonable apprehension that they might interfere with the right of navigation on the River Mersey or other public rights over the foreshore,

the ACRM may include the land works or any part of them in any notice under sub-paragraph (13).

(15) If the work specified in a notice given under sub-paragraph (13) is not completed to the satisfaction of the ACRM, the ACRM may undertake that work and may recover any expenditure reasonably incurred in doing so from the undertaker.

(16) On completion of the construction of the tidal works, the undertaker must supply to the ACRM a plan on a scale of not less than 1 to 2500 and sections and elevations on a scale of not less than 1 to 100 showing to the ACRM’s reasonable satisfaction the situation and levels of the permanent tidal works at that time.

47.—(1) The undertaker must at all times comply with the hydrodynamic and sedimentary monitoring plans agreed between the undertaker and the ACRM and any variations of the plan agreed between them.

(2) If the undertaker fails to do so to the satisfaction of the ACRM, the ACRM may undertake such measures as are reasonably necessary to secure such compliance and may recover any expenditure reasonably incurred from the undertaker in doing so.

48. When giving any notice required by this Order to Trinity House or the Mersey Docks and Harbour Company, the undertaker must give a copy of that notice to the ACRM.

49.—(1) The undertaker must reimburse to the ACRM all costs, charges, damages and expenses which may reasonably be incurred by the ACRM—

(a) by reason of the construction or maintenance of the authorised works or failure subsequently; or

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- (b) by reason of any act or omission of the undertaker or of any persons in its employ or of its contractors or agents or others whilst engaged upon the construction or maintenance of the authorised works or dealing with any failure of such works; or
- (c) by reason of the hydrodynamic and sedimentary monitoring plan.

(2) The undertaker must indemnify the ACRM from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission.

(3) The fact that any act or thing may have been done by the ACRM on behalf of the undertaker or done by the undertaker, any person in its employ or its contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the ACRM, or in a manner approved by the ACRM, or under its supervision or the supervision of its duly authorised representative, shall not (if it was done or required without negligence on the part of the ACRM or the duly authorised representative of the ACRM, or any person in the employ of the ACRM or the contractors or agents of the ACRM) excuse the undertaker from liability under the provisions of this paragraph.

(4) The ACRM must give the undertaker reasonable notice of any such claim or demand as is referred in sub-paragraph (1) and no settlement or compromise subsequently may be made without the prior consent of the undertaker, which must not be unreasonably withheld.

50. Any difference arising between the undertaker and the ACRM under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) must be referred to and settled by arbitration in accordance with article 62 (arbitration).

PART 5

PROTECTION OF NETWORK RAIL INFRASTRUCTURE LIMITED

51. For the protection of Network Rail the following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 64, any other person on whom rights or obligations are conferred by that paragraph, have effect.

52. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” have corresponding meanings;

“the engineer” means an engineer appointed by Network Rail 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 Infrastructure Limited by the Secretary of State in exercise of the powers under section 8 of the Railways Act 1993⁽⁴⁾;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587) whose registered office is at Kings Place, 90 York Way, London, N1 9AG 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 1159 of the Companies Act 2006⁽⁵⁾) 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, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging

(4) 1993 c. 43.

(5) 2006 c. 46.

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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 and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

“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.

53.—(1) Where under this Part of this Schedule Network Rail is required to give its consent or approval in respect of any matter, that consent or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) 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—

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

54.—(1) The undertaker shall not exercise the powers conferred by article 16 (power to survey and investigate land) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

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

(3) The undertaker shall not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 9 (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.

(4) The undertaker shall not under the powers conferred by this Order acquire or use or acquire new rights over any railway property except with the consent of Network Rail.

(5) Where Network Rail is asked to give its consent pursuant to this paragraph, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

55.—(1) The undertaker shall before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work shall not be commenced 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, 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 the engineer has not intimated disapproval of those plans and the grounds of disapproval the engineer shall be deemed to have approved the plans as submitted.

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(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, Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail shall construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker 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 undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using the same (including any relocation, de-commissioning and removal 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 or by the undertaker, if Network Rail so desires, and such protective works shall be carried out at the expense of the undertaker in either case without unnecessary delay 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 to the engineer's reasonable satisfaction.

56.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 55(4) shall, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 55;
- (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, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it.

(2) If any damage to railway property or any such interference or obstruction shall be caused by the carrying out of, or in consequence of the construction of, a specified work, the undertaker shall, regardless of any such approval, make good such damage and shall pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

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

57. The undertaker 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 the engineer may reasonably require with regard to a specified work or the method of constructing it.

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

59.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, during the construction of the specified work, or during a period of 12 months after the opening of the new bridge to traffic subject to toll in order to ensure the safety of railway property or the continued safe operation of the railways of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the undertaker shall pay to Network Rail 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 in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that that part of the specified work is to be constructed, Network Rail shall assume construction of that part of the specified work and the undertaker shall, regardless of any such approval of a specified work under paragraph 55(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 60(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) 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 Network Rail under this paragraph.

60. The undertaker shall repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 55(3) or in constructing any protective works under the provisions of paragraph 55(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;
- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchguards 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 a specified work;
- (d) 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 a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) 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 a specified work.

61. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property,

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the undertaker 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.

62. The undertaker 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 unless it shall have first consulted Network Rail and it shall comply with Network Rail'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.

63. Any additional expenses which Network Rail 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 undertaker, be repaid by the undertaker to Network Rail.

64.—(1) The undertaker shall pay to Network Rail 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—

- (a) by reason of the construction or maintenance of a specified work or the failure of it; 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 a specified work,

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

(2) Network Rail shall give the undertaker 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 undertaker.

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

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

(6) In this paragraph—

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

65. Network Rail shall, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other

liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 64) and with such information as may reasonably enable the undertaker 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).

66. 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 undertaker under this Part of this Schedule or increasing the sums so payable.

67. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans and land 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 or any lands, works or other property referred to in this paragraph.

68. Nothing in this Order, or in any enactment incorporated with or applied by this Order, shall prejudice or affect the operation of Part 1 of the Railways Act 1993.

69. The undertaker shall give written notice to Network Rail if any application is proposed to be made by the undertaker for the Secretary of State's consent, under article 43 (power to enter into concession agreements and lease or transfer of undertaking, etc.) and any such notice shall be given no later than 28 days before any such application is made and shall describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

70. The undertaker shall, no later than 28 days from the date that the plans submitted to the Secretary of State are certified in accordance with article 59 (certification of plans, etc.), provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

PART 6

PROTECTION OF UNITED UTILITIES WATER PLC

Interpretation

71. In this Part of this Schedule—

“alteration” includes the provision of alternative means of operation or the diversion of any apparatus;

“apparatus” means—

- (a) mains, pipes or other apparatus belonging to, or maintained by, the company for the purposes of water supply; and

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- (b) any water main or service pipe (or part of it) that is subject to an agreement to adopt made under section 51A of the Water Industry Act 1991⁽⁶⁾; and
- (c) any sewer, drain or works vested in the company under the Water Industry Act 1991 and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works; and
- (d) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to such apparatus;

“the company” means United Utilities Water PLC or its successor for the time being in its capacity as either a water undertaker or a sewerage undertaker within the meaning of the Water Industry Act 1991;

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

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

“specified work” means so much of the authorised works as will or may be situated over or within 15 metres (or 200 metres where explosives are used) measured in any direction of any apparatus, or (wherever situated) as will or may impose any load directly upon any apparatus.

No application where street works code applies

72. This Part of this Schedule (other than paragraphs 73 and 76) shall not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the undertaker and the company are regulated by the provisions of Part 3 of the 1991 Act.

Disapplication of Schedule 9 in part

73. Paragraphs 1(1) and 2 of Schedule 9 (provisions relating to statutory undertakers, etc.) shall not apply in relation to apparatus to which this Part of this Schedule applies and paragraph 1(3) and (4) of that Schedule shall have effect as if they referred to apparatus removed under this Part of this Schedule.

Acquisition of apparatus, etc.

74. Notwithstanding anything in the Order or shown on the deposited plans, the undertaker shall not acquire from the company any apparatus or land pursuant to the Order otherwise than by agreement or with the company’s consent which shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

Exercise of powers respecting trial holes

75. The undertaker shall not, in the exercise of the powers of section 11(3) of the 1965 Act, as applied by this Order, or of article 16 (power to survey and investigate land), make any trial holes which interfere with any apparatus without the consent of the company (which shall not be unreasonably withheld).

(6) 1991 c. 56.

Access

76.—(1) If in consequence of the exercise of the powers of this Order the access to any apparatus is materially obstructed, the undertaker shall provide reasonable alternative means of access to such apparatus which is not materially less convenient to the access enjoyed by the company prior to the obstruction.

(2) Where, in consequence of this Order, any part of a highway in which any apparatus is situated ceases to be part of a highway, the company may exercise the same rights of access to such apparatus as it enjoyed immediately before the making of this Order, but nothing in this sub-paragraph shall prejudice or affect the power of the undertaker to make provision for the alteration or removal of such apparatus in submitting plans under paragraph 77.

(3) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 9 (temporary stopping up of streets), and subject always to the power of the undertaker to make provision for the alteration of such apparatus the company shall be at liberty at all times after giving reasonable notice except in a case of urgency to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain, protect, or use any apparatus which at the time of the stopping up or diversion was in that highway.

Plan approval

77.—(1) Without prejudice to the other provisions of this Part of this Schedule, before commencing the construction or renewal of any specified work liable to affect any apparatus, and in the case of such a specified work of a temporary nature its removal, the undertaker shall submit to the company plans as described in sub-paragraph (2) (“the plans”) and shall not commence that work until the company has signified in writing its approval of those plans.

(2) The plans to be submitted to the company 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 apparatus within 15 metres of that work or upon which the specified work will impose a load and shall include detailed drawings of any works for alteration or replacement or protection of such apparatus which the undertaker may propose.

(3) For the purpose of the preparation of the plans and subject to such reasonable requirements as it may specify, the company shall promptly upon the undertaker’s reasonable request permit the undertaker to have access to plans in its possession and to any of its apparatus.

(4) Any approval of the company 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 42 days of the submission of plans for approval.

(5) Prior to their approval under sub-paragraph (1), the company may require such modifications to be made to the plans as may be reasonably necessary for the alteration or replacement of apparatus, to secure apparatus and the remainder of its undertaking as a sewerage undertaker and water undertaker against interference or risk of damage and to provide and secure reasonably proper and convenient means of access to apparatus and its sewage treatment works.

78.—(1) The specified works shall be constructed and, in the case of any temporary work removed, in accordance with plans approved, or deemed to be approved, or settled by arbitration, as the same may be amended from time to time by agreement between the undertaker and the company, and in the construction and removal of the specified works, the undertaker shall comply with all reasonable requirements of the company (which shall be given as soon as reasonably practicable) and shall provide reasonable new, altered or substituted apparatus or works for the protection of

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apparatus and the remainder of its undertaking as a sewerage undertaker and water undertaker, in such manner as the company may reasonably require, by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such apparatus and the remainder of its undertaking by reason of the specified works.

(2) All works under sub-paragraph (1), for the provision of new, altered or substituted apparatus or the protection of any apparatus shall, where so required by the company, be constructed by the company or under the supervision, if given, of an officer of the company duly appointed for the purpose and to the company's reasonable satisfaction, and all costs, charges and expenses reasonably incurred by the company 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 company by the undertaker.

(3) Where works are constructed under sub-paragraph (1) by the company, they shall be constructed with all reasonable despatch and also to the reasonable satisfaction of the undertaker.

(4) When works for the provision of any such new, altered or substituted apparatus, or any such protective work forming part of any such new, altered or substituted apparatus or any existing apparatus, have been completed under this Part of this Schedule to the reasonable satisfaction of the company, they shall be vested in the company forthwith but shall be maintainable by the undertaker until a period of 12 months has elapsed and the company or an engineer appointed by the company acting reasonably has issued a certificate of final inspection of the new, altered or substituted apparatus.

79.—(1) Subject to the following provisions of this Part of this Schedule, the undertaker shall be liable to make good, or, if the company so decides, to repay to the company any reasonable expense reasonably incurred by the company in making good, all injury or damage to any apparatus (except in so far as such apparatus is intended for alteration or removal for the purposes of the specified work) caused by or resulting from the construction of any specified work or any investigation undertaken in relation to any specified works and the provision of any new, altered or substituted apparatus or any protective work under this Part of this Schedule and shall pay to the company any reasonable additional expense to which it may be put in the maintenance, management or renewal or any new, altered or substituted apparatus which may be necessary in consequence of the construction of any specified work save to the extent that sub-paragraph (6) applies provided that the undertaker may at its request pay a capitalised sum to the company in settlement of any such claim by the company representing the reasonable additional expense to which the company reasonably expects to be put.

(2) The company shall, in respect of the capitalised sums referred to in sub-paragraph (1) provide such details of the formula by which those sums should be calculated as the undertaker may reasonably require.

(3) The undertaker shall indemnify the company against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the company which the company 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 any specified work or in consequence of any act or omission of the undertaker, their contractors, agents, workers or servants, whilst engaged upon the specified work and any new, altered or substituted apparatus or any protective work.

(4) The company shall give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement in writing of the undertaker which, if it withholds any such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Nothing in sub-paragraph (1) or (3) shall impose any liability on the undertaker in respect of any damage to the extent that it is attributable to the act, neglect or default of the company, its officers, servants, or, if not the undertaker, its contractors or agents.

(6) If pursuant to the provisions of this Part of this Schedule—

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- (a) alternative apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type, or
- (b) apparatus (whether existing apparatus or alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated, and the placing of apparatus of that type or capacity or of those dimensions, or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration to be necessary having regard, among other things, to the nature of the authorised works, then, if it involves cost in the construction of works under paragraph 76 exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the company by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(7) For the purposes of sub-paragraph (6), an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by the existing apparatus.

(8) An amount which apart from this sub-paragraph would be payable to the company in respect of works by virtue of this paragraph 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 company any financial benefit by deferment of the time for renewal of the apparatus or of the system of which it forms part in the ordinary course, be reduced by the amount which represents that benefit.

(9) In any case where work is carried out by the undertaker pursuant to paragraph 76 and, if such work had been carried out by the company, the repayment made to the company under this paragraph would fall to be reduced pursuant to sub-paragraphs (4) to (6), the company shall pay to the undertaker such sum as represents the amount of that reduction.

80.—(1) An officer of the company duly appointed for the purpose may, at any reasonable time and, if required by the undertaker, under their supervision and control, enter upon and inspect any specified work or any other works constructed under this Part of this Schedule but may not give instructions to any person engaged in or about the specified works except the undertaker or such person as it may from time to time nominate.

(2) The approval by the company 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 company, its officers, servants, or, if not the undertaker, its contractors or agents) exonerate the undertaker from any liability or affect any claim for damages by the undertaker.

81. As soon as reasonably practicable after the completion of the construction of the specified works, the undertaker shall deliver to the company 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.

PART 7

PROTECTION OF CABLE AND WIRELESS UK

82.—(1) For the protection of C&W, the following provisions of this Part of this Schedule shall, unless it is otherwise agreed in writing between the undertaker and C&W, have effect.

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(2) In this Part of this Schedule—

“C&W” means Cable & Wireless UK; and

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003⁽⁷⁾.

83. The temporary stopping up or diversion of any street under article 9 (temporary stopping up of streets) shall not affect any right of a public communications provider under paragraph 9 of the Telecommunications Code (“the Code”), contained in Schedule 2 to the Telecommunications Act 1984⁽⁸⁾ as amended by Schedule 3 to the Communications Act 2003, in respect of any apparatus which at the time of the temporary stopping up or diversion is in that street.

84. If C&W suffers damage by reason or in consequence of the construction, use or failure of the authorised works or any subsidence resulting from those works, the undertaker shall pay the cost reasonably incurred by C&W in making good such damage, and shall indemnify C&W against claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by C&W by reason or in consequence of any such damage, but—

- (a) nothing in this paragraph shall impose any liability on the undertaker with respect to any damage to the extent that such damage is attributable to any act or omission of C&W, its officers, servants, contractors or other agents; and
- (b) C&W shall give to the undertaker reasonable notice of any claim, demand or proceedings and shall make no settlement of any claim, demand or proceedings without the consent of the undertaker, such consent not to be unreasonably withheld.

85. Nothing in this Order shall affect any right of a public communications provider under the Code.

(7) 2003 c. 21.

(8) 1984 c. 12.