

SCHEDULES

SCHEDULE 9

Article 42

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the Council and the undertaker concerned.

(2) The provisions of paragraph 1 of Schedule 8 (provisions relating to statutory undertakers etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Schedule applies.

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(1)) belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, any mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(2); and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

(1) 1989 c. 29.
(2) 1991 c. 56.

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

“undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽³⁾;
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991, for the area of the authorised works, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the Council and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

4. Regardless of any provision in this Order or anything shown on the deposited plans the Council must not acquire any apparatus other than by agreement.

5.—(1) If, in the exercise of the powers conferred by this Order, the Council acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule, and any right of an undertaker to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the Council requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the Council must, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the Council and for the subsequent maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the Council, or the Council is unable to afford such facilities and rights as are mentioned in sub-paragraph (2), in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question must, on receipt of a written notice to that effect from the Council, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the Council under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Council or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the Council to be removed under the provisions of this Part of this Schedule.

(3) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

(6) Regardless of anything in sub-paragraph (5), if the Council gives notice in writing to the undertaker in question that it desires itself to execute any work to which this sub-paragraph applies, that work, instead of being executed by the undertaker, must be executed by the Council without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Sub-paragraph (6) applies to any part of any work necessary in connection with construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land of the Council.

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

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Council affords to an undertaker facilities and rights for the construction and maintenance in land of the Council of alternative apparatus in substitution for apparatus to be removed, those facilities and rights may be granted upon such terms and conditions as may be agreed between the Council and the undertaker in question or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

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

- (a) give effect to all reasonable requirements of the Council for ensuring the safety and efficient operation of the railway of the Council and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Council or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions if any applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

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

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

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

(3) Any requirements made by the undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the Council, reasonably requires the removal of any apparatus and gives written notice to the Council of that requirement, paragraphs 1 to 6 apply as if the removal of the apparatus had been required by the Council under paragraph 5(2).

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

(6) The Council is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) Subject to the following provisions of this paragraph, the Council must repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

(a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Council or, in default of agreement, is not determined by arbitration in accordance with article 47 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1), is to be reduced by the amount of that excess.

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

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

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

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

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 5(2), any damage is caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the Council must—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

by reason or in consequence of any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the Council with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

(3) An undertaker must give the Council reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the Council, which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

10. Nothing in this Schedule affects the provisions of any enactment or agreement regulating the relations between Network Rail and an undertaker in respect of any apparatus laid or erected on land belonging to Network Rail on the date on which this Order is made of which the benefit and burden is transferred to the Council under article 36 (transfer of former Croxley Green Branch line).

PART 2

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

11.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the Council and the operator.

(2) In this Part of this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the Communications Act 2003(4);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the Communications Act 2003; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the Communications Act 2003; and

“operator” means the operator of an electronic communications code network.

(4) 2003 c. 21. See section 106.

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12.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the construction of the authorised works, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,
- (c) the Council must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and must—
 - (i) make reasonable compensation to an operator for loss sustained by it; and
 - (ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the Council with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the Council reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of the Council which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the Council and the operator under this paragraph is to be referred to and settled by arbitration under article 47 (arbitration).

13. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the Council and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.

14. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the Council and an operator in respect of any apparatus laid or erected in land belonging to the Council on the date on which this Order is made of which the benefit and burden is transferred to the Council under article 36 (transfer of former Croxley Green Branch line).

PART 3

PROTECTION FOR NETWORK RAIL

15. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the Council and Network Rail and, in the case of paragraph 29, any other person on whom rights or obligations are conferred by that paragraph.

16. 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 amended from time to time, granted to Network Rail by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993⁽⁵⁾;

“Network Rail” includes 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)⁽⁶⁾ the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

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

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

“railway property” means any railway belonging to Network Rail 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 for the benefit of 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.

17.—(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 must not be unreasonably withheld or delayed but may be subject to reasonable conditions and 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 must—

- (a) co-operate with the Council with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements arising 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 under this Order.

18.—(1) The Council must not exercise the powers conferred by article 14 (power to survey and investigate land) or the powers conferred by section 11(3) of the 1965 Act or the Compulsory Purchase (Vesting Declarations) Act 1981⁽⁷⁾ as applied by this Order in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The Council must 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 Council must not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 8 (provisions relating to statutory undertakers etc.), in relation to any right

⁽⁵⁾ 1993 c. 43.

⁽⁶⁾ 2006 c. 46.

⁽⁷⁾ 1981 c. 66.

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of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The Council must not under the powers conferred by this Order acquire or use or acquire new rights over, or seek to impose any restrictions on the use of, any railway property except with the consent of Network Rail.

19.—(1) The Council must 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 must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration under article 47 (arbitration).

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld or delayed, and if by 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 is to be deemed to have approved the plans as submitted.

(3) If by the end of the period of 56 days beginning with the date on which such plans have been supplied to Network Rail, Network Rail gives notice to the Council 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, then if the Council desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the Council in accordance with the plans approved or deemed to be approved or settled under this paragraph.

(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 of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes are to be constructed by Network Rail but at the expense of the Council, or if Network Rail so desires such protective works must be carried out by the Council at its own expense without unnecessary delay and the Council must not commence the construction of the specified works until the engineer has notified the Council that the protective works have been completed to the engineer's reasonable satisfaction.

20.—(1) Any specified work and any protective works to be constructed by virtue of paragraph 19(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 19;
- (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 or the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of, a specified work, the Council must, regardless of any approval described in paragraph 20(1)(a), make good such damage and 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 imposes—
- (a) any liability on the Council with respect to any damage, costs, expenses or loss attributable to the negligence of Network Rail or its servants, contractors or agents; or
 - (b) any liability on Network Rail with respect to any damage, costs, expenses or loss attributable to the negligence of the Council or its servants, contractors or agents.

21. The Council must—

- (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.

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

23.—(1) If any permanent or temporary alterations or additions to railway property, or to any protective works under paragraph 19(4), are reasonably necessary during the construction of a specified work, or during a period of 12 months after the opening for public use of any authorised work that includes a specified work, in consequence of that specified work, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the Council reasonable notice of its intention to carry out such alterations and additions, the Council must 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 Council, Network Rail gives notice to the Council 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 Council desires that part of the specified work to be constructed, Network Rail must assume construction of that part of the specified work and the Council must, regardless of any such approval of a specified work under paragraph 19(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) 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 must be set off against any sum payable by the Council to Network Rail under this paragraph.

24. The Council must 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 Council as provided by paragraph 19(3) or in constructing any protective works under the provisions of paragraph 19(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 Council 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 and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference,

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obstruction, danger or accident arising from the construction or failure of a specified work;
and

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

25.—(1) In this paragraph—

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

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

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 19(1) for the relevant part of the authorised works giving rise to EMI (unless the Council has been given notice in writing before the approval of those plans of the intention to make such change).

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

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

- (a) the Council must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 19(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the Council all information in the possession of Network Rail reasonably requested by the Council in respect of Network Rail’s apparatus identified under sub-paragraph (a); and
- (c) Network Rail must allow the Council reasonable facilities for the inspection of Network Rail’s apparatus identified under sub-paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution must be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 19(1) has effect subject to this sub-paragraph.

(6) If at any time prior to the authorised works being open for public use regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised works causes EMI then the Council must immediately upon receipt of notification by Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the Council’s apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail’s apparatus.

(7) In the event of EMI having occurred—

- (a) the Council must afford reasonable facilities to Network Rail for access to the Council's apparatus in the investigation of such EMI;
 - (b) Network Rail must afford reasonable facilities to the Council for access to Network Rail's apparatus in the investigation of such EMI; and
 - (c) Network Rail must make available to the Council any additional material information in its possession reasonably requested by the Council in respect of Network Rail's apparatus or such EMI.
- (8) Where Network Rail approves modifications to Network Rail's apparatus under sub-paragraph (5) or (6)—
- (a) Network Rail must allow the Council reasonable facilities for the inspection of the relevant part of Network Rail's apparatus; and
 - (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the Council in accordance with paragraph 20.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 29(1) applies to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.
- (10) For the purpose of paragraph 24(a) any modifications to Network Rail's apparatus under this paragraph are to be deemed to be protective works referred to in that paragraph.
- (11) In relation to any dispute arising under this paragraph the reference in article 47 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Electrical Engineers.
- 26.** The Council must 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 has first consulted Network Rail and it must 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 belonging to Network Rail.
- 27.** 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 Council 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, the Council must, 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.
- 28.** Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the date when this Order was made by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Council, are to be repaid by the Council to Network Rail.
- 29.—(1)** The Council must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (but subject to article 46 (no double recovery) 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 such a work; or
 - (b) by reason of any act or omission of the Council or of any person in its employ or of its contractors or others whilst engaged upon a specific work,

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and the Council must 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 Council or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision will 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 Council from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the Council reasonable notice of any such claim or demand and must make no settlement or compromise of such a claim or demand without the prior consent of the Council.

(3) The sums payable by the Council under sub-paragraph (1) may 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 must promptly pay to each train operator the amount of any such 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 will, in the event of default, be enforceable directly by any train operator concerned to the extent that the relevant costs would be payable to that train operator under 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.

30. Network Rail must, on receipt of a request from the Council, from time to time provide the Council free of charge with written estimates of the costs, charges, expenses and other liabilities for which the Council is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 29) and with such information as may reasonably enable the Council to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

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

32. The Council must no later than 28 days from the date that the plans submitted to and certified by the Secretary of State in accordance with article 44 (certification of plans etc.) are certified by the Secretary of State, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

PART 4

PROTECTION FOR LUL

33. The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the Council and LUL.

34. In this Part of this Schedule—

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

“EMI” means electromagnetic interference with LUL’s works and apparatus generated by the operation of the authorised works (including the operation of trains using the Croxley Rail Link) where such interference is of a level which affects the safe and efficient operation of LUL’s works and apparatus;

“the engineer” means an engineer appointed by LUL for the purposes of this Order;

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

“plans” includes sections, drawings, particulars and schedules of construction (including particulars as to the working methods and phases of the specified works) and “approved plans” means plans approved or settled by arbitration under article 47 (arbitration) and in accordance with the provisions of this Part of this Schedule;

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

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

35. The provisions of Schedule 8 (provisions relating to statutory undertakers etc.) do not apply to works, apparatus and equipment to which this Part of this Schedule applies.

36.—(1) The Council must 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 LUL.

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

37.—(1) The Council must not under the powers of this Order, without the consent of LUL, which is not to be unreasonably withheld, acquire or enter upon, take or use, whether temporarily or permanently or acquire any new rights over any railway property.

(2) Sub-paragraph (1) is not to prevent the Council from acquiring the interest of any person other than LUL in the said land unless existing provisions governing the transfer of such interest prevent such interest being transferred.

38. The Council must, before commencing the construction of any part of the specified works, supply to LUL such proper and sufficient plans relevant to the part of the specified works concerned (including particulars as to the working methods and the regulation of traffic in the vicinity of those specified works) as may be reasonably required by the engineer and must not commence those specified works until the plans have been approved in writing by the engineer or settled by arbitration under article 47 (arbitration).

39. The engineer’s approval under paragraph 38 must not be unreasonably withheld and any question of whether it has been unreasonably withheld is to be settled by arbitration under article 47

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(arbitration) and the engineer's approval or disapproval of the plans must be notified within 56 days of their submission.

40. If within 56 days after the plans have been supplied to LUL, LUL gives notice to the Council that LUL desires to construct any part of the specified works, which in the opinion of the engineer will or may affect the stability of railway property or the safe and effective operation of LUL's railway undertaking, then, if the Council desires such part of the specified works to be constructed, LUL must construct it without unnecessary delay on behalf of, and to the reasonable satisfaction of, the Council in accordance with the plans approved or settled in accordance with this Part of this Schedule or amended as agreed with the Council.

41. Upon signifying approval or disapproval 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 the specified works to ensure the stability of railway property, the continuation of the safe and efficient operation of LUL's railway undertaking and the comfort and safety of the passengers who may be affected by the specified works and such protective works as may be reasonably necessary for those purposes must be constructed by LUL at the expense of the Council without unnecessary delay, or if LUL so desires, such protective works must be carried out by the Council at its own expense without unnecessary delay to the satisfaction of the engineer and the Council must not commence the construction of the specified works until the engineer has notified the Council that the protective works have been completed to the engineer's reasonable satisfaction.

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

43. The construction of the specified works, any protective works and any alterations and additions to them carried out by the Council must be carried out in such a way so as not to prejudice the safety of LUL's railway and without limitation to this obligation those works, when commenced, must be carried out—

- (a) without unnecessary delay in accordance with the plans approved or settled in accordance with this Part of this Schedule;
- (b) under the supervision (if required by the engineer), and to the reasonable satisfaction of the engineer;
- (c) in such manner as to mitigate against any damage to the railway property; and
- (d) so far as reasonably practicable, so as not to interfere with or obstruct the free uninterrupted and safe use of LUL's railway, the conduct of traffic on the railways of LUL and the use by passengers of railway property,

and if any damage to railway property or any such interference or obstruction is caused by the carrying out of the specified works or any protective works carried out, the Council must, notwithstanding any approval in accordance with this Part of this Schedule, make good such damage and must pay to LUL all reasonable expenses to which LUL may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

44. Nothing in paragraph 43 imposes any liability on the Council with respect to any damage, cost, expense or loss which is attributable to the negligence of LUL or any person in its employ, or of its contractors or agents and any liability of the Council under paragraph 43 is to be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of LUL or of any person in its employ, or of its contractors or agents.

45. The Council must at all times afford reasonable facilities to the engineer for access to the specified works during their construction and the construction of any protective works carried out by the Council under the provisions of paragraph 41 and must supply the engineer with all such information as the engineer may reasonably require with regard to the specified works or any such protective works or to the method of construction of them.

46. During the construction of any works by LUL under this Part of this Schedule, LUL must at all times afford reasonable facilities to the Council and its agents for access to those works, the Council complying at all times with LUL's requirements for training and safety, and must supply the Council with such information as it may reasonably require with regard to such works or the method of constructing them.

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

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

49. If the cost of maintaining, working or renewing its railway property is reduced in consequence of any such alterations or additions referred to in paragraph 47, a capitalised sum representing such saving is to be set off against any sum payable by the Council to LUL under this Part of this Schedule.

50. The Council must repay to LUL all reasonable costs, charges and expenses reasonably incurred by LUL—

- (a) in constructing any part of a specified work on behalf of the Council as provided by paragraph 40 or in constructing any protective works under the provisions of paragraph 41, including, in respect of any permanent protective works, a capitalised sum representing the cost which may be expected to be reasonably incurred by LUL in maintaining and renewing such works;
- (b) in respect of the employment or procurement of the services of any inspectors, supervisory staff, signallers, watchkeepers and other persons appointed for inspecting, monitoring, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works and to ensure the continued safe and efficient operation of LUL's railway undertaking (including any relocation of works, apparatus and equipment necessitated by the specified works) and the comfort and safety of passengers;
- (c) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of the specified works or from the substitution or diversion of railway services of LUL which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or consequence of the construction or failure of the specified works; and
- (e) in respect of the approval of plans and any supervision by the engineer of the construction of the specified works.

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51. The Council must be responsible for, and make good to LUL all reasonable costs, charges, damages and expenses not otherwise provided for in paragraph 50 which may be occasioned to or reasonably incurred by LUL—

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

and the Council must indemnify LUL from and against all claims and demands arising out of or in connection with the construction of the specified works or any failure, act or omissions as referred to in this Part of this Schedule; and the fact that any act or thing may have been done in accordance with any requirement of the engineer or under the engineer’s supervision must not (if it was not attributable to the act, neglect or default of LUL or of any person in its employ, or of its contractors or agents) excuse the Council from any liability under the provisions of this Part of this Schedule.

52.—(1) Any liability of the Council under paragraph 51 is to be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the act, neglect or default of LUL or of any person in LUL’s employ, or of LUL’s contractors or agents.

(2) LUL must give to the Council immediate notice of any claim or demand and no settlement or compromise of any claim or demand is to be made without the prior consent of the Council (such consent not to be unreasonably withheld).

53. Any difference arising between the Council and LUL under this Part of this Schedule must be referred to and settled by arbitration under article 47 (arbitration).

PART 5

PROTECTION FOR THE CANAL & RIVER TRUST

Interpretation

54.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the Council and the Trust.

(2) In this Part of this Schedule—

“the Trust’s network” means the Trust’s network of waterways;

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

- (a) the execution and placing of that work; and
- (b) any relaying, renewal, or maintenance of that work as may be carried out during the period of 24 months from the completion of that work;

and “construct” and “constructed” have corresponding meanings;

“detriment” means any damage to the waterway or any other property of the Trust and, without limitation on the scope of that meaning, includes—

- (c) any obstruction of, or interference with, or hindrance or danger to, navigation or to any use of the waterway (including towing paths);
- (d) the erosion of the bed or banks of the waterway, or the impairment of the stability of any works, lands or premises forming part of the waterway;
- (e) the deposit of materials or the siltation of the waterway so as to damage the waterway;
- (f) the pollution of the waterway;

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- (g) any significant alteration in the water level of the waterway, or significant interference with the supply of water to it, or drainage of water from it;
- (h) any harm to the ecology of the waterway (including any adverse impact on any site of special scientific interest comprised in the Trust’s network);
- (i) any interference with the exercise by any person of rights over the Trust’s network;

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

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

“practical completion” means practical completion of all of the specified work notwithstanding that items which would ordinarily be considered snagging items remain outstanding, and the expression “practically complete” and “practically completed” are to be construed accordingly;

“protective work” means a work constructed under paragraph 59(3)(a);

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

“towing path” means the towing path forming part of the waterway;

“the Trust” means the Canal & River Trust;

“the waterway” means the Grand Union Canal, and includes any works, lands or premises belonging to the Trust, or under its management or control, that are held or used by the Trust in connection with that canal.

Powers requiring the Trust’s consent

55.—(1) The Council must not under the powers conferred by this Order acquire compulsorily any land of the Trust or any easement or other right over such land, or use any such land, unless such acquisition or use is with the consent of the Trust.

(2) The Council must not in the exercise of the powers conferred by this Order obstruct or interfere with pedestrian or vehicular access to the waterway unless such obstruction or interference with such access is with the consent of the Trust.

(3) The Council must not exercise the powers conferred by article 9(1) (temporary stopping up of streets) in relation to any way over land comprised in the waterway unless such exercise is with the consent of the Trust.

(4) Nothing in article 15 (temporary interference with waterways) authorises the Council—

- (a) to discharge any water directly or indirectly into the waterway; or
- (b) to carry out any works to, or make any opening in, or otherwise interfere with, the waterway (including its banks and bed),

except with the consent of the Trust and on terms that the Trust may reasonably require, and in accordance with plans approved by, and under the supervision (if given) of, the engineer.

(5) The Council must not exercise any power conferred by this Order in such a way as to interfere with the supply of water to or the drainage of water from the waterway unless such exercise is with the consent of the Trust.

(6) The Council must not exercise the powers conferred by article 14 (power to survey and investigate land) and the powers conferred by article 15, or section 11(3) of the 1965 Act (power of entry for surveying land), in relation to the waterway unless such exercise is with the consent of the Trust.

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(7) The Council must not exercise the powers conferred by sections 271 or 272 of the 1990 Act, as applied by Schedule 8 (provisions relating to statutory undertakers etc.), so as to divert any right of access to the waterway, but such right of access may be diverted with the consent of the Trust.

(8) The consent of the Trust under sub-paragraphs (1) to (7) and the approval of plans under sub-paragraph (4) must not be unreasonably withheld or delayed but may be given subject to reasonable terms and conditions which in the case of article 13 (discharge of water) may include conditions—

- (a) specifying the maximum volume of water which may be discharged in any period; and
- (b) authorising the Trust on giving reasonable notice (except in an emergency, when the Trust may require immediate suspension) to the Council to require the Council to suspend the discharge of water or reduce the flow of water where this is necessary by reason of any operational or environmental requirement of the Trust.

Vehicles, plant and machinery

56. The Council must not use any land or property of the Trust forming part of the waterway for the passage or siting of vehicles, plant or machinery employed in the construction of the specified works other than—

- (a) with the consent in writing of the engineer whose consent must not be unreasonably withheld; and
- (b) subject to compliance with such reasonable requirements as the engineer may from time to time specify—
 - (i) for the prevention of detriment; or
 - (ii) in order to avoid or reduce any inconvenience to the Trust, its officers and agents and all other persons lawfully on such land or property,

but nothing in this paragraph applies in relation to anything done in accordance with any approval given by the Trust under paragraph 59.

Fencing

57. Where required by the engineer the Council must to the reasonable satisfaction of the engineer fence off a specified work or a protective work or take such other steps as the engineer may require to be taken for the purpose of separating a specified work or a protective work from the waterway, whether on a temporary or permanent basis.

Survey of waterway

58.—(1) Before the commencement of the initial construction of any part of the specified works and again following practical completion of the specified works the Council must bear the reasonable cost of the carrying out by a qualified engineer (“the surveyor”), to be approved by the Trust and the Council, of a survey (including a dip-survey to measure the depth of the waterway) (“the survey”) of so much of the waterway and of any land and existing works of the Council which may provide support for the waterway as will or may be affected by the specified works.

(2) For the purposes of the survey the Council must—

- (a) on being given reasonable notice (save in case of emergency, when immediate access must be afforded) afford reasonable facilities to the surveyor for access to the site of the specified works and to any land and existing works of the Council which may provide support for the waterway as will or may be affected by the specified works; and

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- (b) supply the surveyor as soon as reasonably practicable with all such information as the surveyor may reasonably require with regard to such existing works of the Council and to the specified works or the method of their construction.
- (3) The reasonable costs of the survey must include the costs of any dewatering or reduction of the water level of any part of the waterway (where reasonably required) which may be effected to facilitate the carrying out of the survey and the provisions of this Part of this Schedule apply with all necessary modifications to any such dewatering or reduction in the water level as though these were specified works.
- (4) Copies of the report of the survey must be provided to both the Trust and the Council at no cost to the Trust.

Approval of plans, protective works etc.

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

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

- (3) When signifying approval of the plans the engineer may specify—
 - (a) any protective work (whether temporary or permanent) which in the reasonable opinion of the engineer should be carried out before the commencement of a specified work to prevent detriment; and
 - (b) such other requirements as may be reasonably necessary to prevent detriment;

and such protective works must be constructed by the Council or by the Trust at the Council's request with all reasonable dispatch and the Council must not commence the construction of a specified work until the engineer has notified the Council that the protective works have been completed to the engineer's reasonable satisfaction.

(4) The Council must pay to the Trust a capitalised sum representing the reasonably increased or additional cost of maintaining and, when necessary, renewing any works, including any permanent protective works provided under sub-paragraph (3), and of carrying out any additional dredging of the waterway necessitated by the exercise of any of the powers of this Order but if the cost of maintaining the waterway, or of works of renewal of the waterway, is reduced in consequence of any such works, a capitalised sum representing such reasonable saving must be set off against any sum payable by the Council to the Trust under this paragraph.

(5) In the event that the Council fails to complete the construction of, or part of, the specified works the Trust may, if it is reasonably required in order to avoid detriment, construct any of the specified works, or part of such works, (together with any adjoining works) in order to complete the construction of, or part of, the specified works and the Council must reimburse the Trust all costs, fees, charges and expenses it has reasonably incurred in carrying out such works.

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Design of works

60. Without affecting its obligations under the provisions of this Part of this Schedule the Council must consult, collaborate and respond constructively to any approach, suggestion, proposal or initiative made by the Trust on—

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

and must have regard to such views as may be expressed by the Trust to the extent that these accord with the requirements of the local planning authority in response to such consultation pursuant in particular to the requirements imposed on the Trust by section 22 (general environmental and recreational duties) of the British Waterways Act 1995⁽⁸⁾ and to the interest of the Trust in preserving and enhancing the environment of its waterways.

Notice of works

61. The Council must give to the engineer 56 days' notice of its intention to commence the construction of any of the specified or protective works, or, in the case of repair carried out in an emergency, such notice as may be reasonably practicable so that, in particular, the Trust may where appropriate arrange for the publication of notices bringing those works to the attention of users of the Trust's network.

Lighting

62. The Council must provide and maintain at its own expense in the vicinity of the specified or protective works such temporary lighting and such signal lights for the control of navigation as the engineer may reasonably require during the construction or failure of the specified or protective works.

Construction of specified works

63.—(1) Any specified or protective works must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled in accordance with this Part of this Schedule and with any requirements made under paragraph 59(3) and paragraph 60;
- (b) under the supervision (if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little detriment as is reasonably practicable;
- (d) in such manner as to cause as little inconvenience as is reasonably practicable to the Trust, its officers and agents and all other persons lawfully using the waterways, except to the extent that temporary obstruction has otherwise been agreed by the Trust.

(2) Nothing in this Order authorises the Council to make or maintain any permanent works in or over the waterway so as to impede or prevent (whether by reducing the width of the waterway or otherwise) the passage of any relevant vessel.

(3) For the purpose of sub-paragraph (2) a relevant vessel is a vessel of a kind and dimensions for the use of which the Trust is required by section 105(1)(b) and (2) of the Transport Act 1968⁽⁹⁾ (maintenance of waterways) to maintain the waterway.

⁽⁸⁾ 1995 c. i.

⁽⁹⁾ 1968 c. 73. This is amended by Schedule 2 of S.I. 2012/1659.

(4) Following the completion of the construction of the specified works the Council must restore the waterway to a condition no less satisfactory than its condition immediately prior to the commencement of those works.

Prevention of pollution

64. The Council must not in the course of constructing a specified work or a protective work or otherwise in connection with those works do or permit anything which may result in the pollution of the waterway or the deposit of materials in it and must take such steps as the engineer may reasonably require to avoid or make good any breach of its obligations under this paragraph.

Access to work: provision of information

- 65.**—(1) The Council on being given reasonable notice must—
- (a) at all times allow 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.
- (2) The Trust on being given reasonable notice must—
- (a) at all times afford reasonable facilities to the Council and its agents for access to any works carried out by the Trust under this Part of this Schedule during their construction; and
 - (b) supply the Council with such information as it may reasonably require with regard to such works or the method of constructing them and the Council must reimburse the Trust's reasonable costs in relation to the supply of such information.

Alterations to waterway

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

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

Maintenance of works

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

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Repayment of the Trust's fees, etc.

68. The Council must repay to the Trust all fees, costs, charges and expenses reasonably incurred by the Trust—

- (a) in constructing any protective works under the provisions of paragraph 59(3)(a);
- (b) in respect of the approval by the engineer of plans submitted by the Council and the supervision by the engineer of the construction or repair of a specified work and any protective works;
- (c) in respect of the employment during the construction of the specified works or any protective works of any inspectors, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, watching and lighting any waterway and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works or any protective works; and
- (d) in bringing the specified works or any protective works to the notice of users of the Trust's network.

Costs of alterations, etc.

69. Any additional expenses which the Trust may reasonably incur in altering, reconstructing or maintaining the waterway under any powers existing at the date when this Order was made by reason of the existence of a specified work, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Council, are to be repaid by the Council to the Trust.

Making good of detriment; compensation and indemnity, etc.

70.—(1) If any detriment is caused by the construction or failure of the specified works or the protective works if carried out by the Council, the Council (if so required by the Trust) must make good such detriment and pay to the Trust all reasonable expenses to which the Trust may be put, and compensation for any loss which the Trust may sustain, in making good or otherwise by reason of the detriment.

(2) The Council is responsible for and must make good to the Trust all 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 the Trust—

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

and subject to sub-paragraph (4) the Council must effectively indemnify and hold harmless the Trust from and against all claims and demands arising out of or in connection with any of the matters referred to in paragraphs (a) and (b).

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

(4) The Trust must give the Council reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the Council.

Details of capitalised sums to be provided

71. If the Trust or the Council cannot jointly agree the formula by which the capitalised sum (referred to in paragraphs 59(4) and 66) is calculated it is to be settled by arbitration in accordance with article 47 (arbitration).

Arbitration

72. Any difference arising between the Council and the Trust under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) is to be referred to and settled by arbitration in accordance with article 47 (arbitration).

PART 6

PROTECTION FOR THE ENVIRONMENT AGENCY

73.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the Council and the Agency.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” are construed accordingly;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“the fishery” means any waters containing fish and the spawn, habitat or food of such fish;

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

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

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

74.—(1) Before beginning to construct any specified work, the Council must submit to the Agency plans of the specified 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 must not be constructed except in accordance with such plans as may be approved in writing by the Agency, or determined under paragraph 85.

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

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- (a) must not be unreasonably withheld;
 - (b) is deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and
 - (c) may be given subject to such reasonable requirements as the Agency may make for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.
- (4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

75. Without limitation on the scope of paragraph 74, the requirements which the Agency may make under that paragraph include conditions requiring the Council at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

76.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 75, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

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

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

(3) If any part of a specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the Council at the Council's own expense to comply with the requirements of this Part of this Schedule or (if the Council elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed) 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) and paragraph 80, 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 Council, 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 incurred by it in so doing is recoverable from the Council.

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

77.—(1) Subject to sub-paragraph (5) the Council must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction

any drainage work which is situated within the limits of deviation or on land held by the Council 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) If any such drainage work which the Council is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the Council to repair and restore the work, or any part of such work, or (if the Council elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to paragraph 80, if, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the Council, the Council 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 implementation, the Agency may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the Council.

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

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not prescribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

78. Subject to paragraph 80, 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 must be made good by the Council to the reasonable satisfaction of the Agency and if the Council fails to do so, the Agency may make good the impairment or damage and recover from the Council the expense reasonably incurred by it in doing so.

79.—(1) The Council must 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 Council requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 80, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the Council fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the Council the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 80, 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 Council the reasonable cost of so doing provided that notice specifying those steps is served on the Council as

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soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

80. Nothing in paragraphs 76(4), 77(3), 78, 79(3) and (4) authorises the Agency to execute works on or affecting a railway forming part of the authorised works without the prior consent in writing of the Council such consent not to be unreasonably withheld or delayed.

81. The Council must indemnify the Agency in respect of all costs, charges and expenses which the Agency may reasonably incur or have to pay or which it may sustain—

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

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

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any damage to the fishery;
- (c) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses;
- (d) any flooding or increased flooding of any such lands; or
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

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

(2) The Agency must give to the Council reasonable notice of any such claim or demand and no settlement or compromise may be made without the agreement of the Council which agreement must not be unreasonably withheld or delayed.

83. The fact that any work or thing has been executed or done by the Council 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, does not relieve the Council from any liability under the provisions of this Part of this Schedule.

84. For the purposes of section 109 of the Water Resources Act 1991⁽¹⁰⁾ (as to structures in, over or under a main river) 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 is deemed also to constitute a consent or approval under that section.

85. Any dispute arising between the Council and the Agency under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 47 (arbitration), but otherwise is to 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 the Council or the Agency, after notice in writing by one to the other.

⁽¹⁰⁾ 1991 c. 57.