

SCHEDULES

SCHEDULE 8

Article 39

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR NETWORK RAIL

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

Commencement Information

II Sch. 8 para. 1 in force at 15.12.2014, see [art. 1](#)

2. 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⁽¹⁾;

“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)⁽²⁾ 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;

“Network Rail Infrastructure Limited” means Network Rail Infrastructure Limited, a company limited by shares and incorporated under the Companies Act 1985, whose registered number is 02904587 and registered office is Kings Place, 90 York Way, London, N1 9AG;

“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—

(1) 1993 c. 43.

(2) 2006 c. 46.

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- (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.

Commencement Information

I2 Sch. 8 para. 2 in force at 15.12.2014, see [art. 1](#)

3.—(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 LUL 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.

Commencement Information

I3 Sch. 8 para. 3 in force at 15.12.2014, see [art. 1](#)

4.—(1) LUL must not exercise the powers conferred by article 20 (power to survey and investigate land, etc.) or the powers conferred by section 11(3) of the 1965 Act (powers of entry) or the Compulsory Purchase (Vesting Declarations) Act 1981(3) 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) LUL 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) LUL must not exercise the powers conferred by section 271 or 272 of the 1990 Act, as applied by Schedule 7 (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) LUL 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.

(3) 1981 c. 66.

Commencement Information

14 Sch. 8 para. 4 in force at 15.12.2014, see [art. 1](#)

5.—(1) LUL 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 48 (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 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 LUL 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 LUL desires such part of the specified work to be constructed, Network Rail must construct it (together with any adjoining part of the specified work which LUL reasonably requires to be constructed in one operation with that work) without unnecessary delay on behalf of and to the reasonable satisfaction of LUL 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 the safe and efficient operation of the railways of Network Rail or the services of operators using those railways (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 LUL, or if Network Rail so desires such protective works must be carried out by LUL at its own expense without unnecessary delay and LUL must not commence the construction of the specified works until the engineer has notified LUL that the protective works have been completed to the engineer's reasonable satisfaction.

Commencement Information

15 Sch. 8 para. 5 in force at 15.12.2014, see [art. 1](#)

6.—(1) Any specified work and any protective works to be constructed under paragraph 5(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 5;
- (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, LUL must, regardless of

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any approval described in sub-paragraph (1)(a), make good such damage and pay to Network Rail all reasonable expenses which Network Rail may incur 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 LUL 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 LUL or its servants, contractors or agents.

Commencement Information

I6 Sch. 8 para. 6 in force at 15.12.2014, see [art. 1](#)

7. LUL 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.

Commencement Information

I7 Sch. 8 para. 7 in force at 15.12.2014, see [art. 1](#)

8. Network Rail must at all times afford reasonable facilities to LUL 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 LUL with such information as it may reasonably require with regard to such works or the method of constructing them.

Commencement Information

I8 Sch. 8 para. 8 in force at 15.12.2014, see [art. 1](#)

9.—(1) If any permanent or temporary alterations or additions to railway property, or to any protective works under paragraph 5(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 LUL reasonable notice of its intention to carry out such alterations and additions, LUL 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 LUL, Network Rail gives notice to LUL 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 LUL desires that part of the specified work to be constructed, Network Rail must assume construction of that part of the specified work and LUL must, regardless of any such approval of a specified work under paragraph 5(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 LUL to Network Rail under this paragraph.

Commencement Information

19 Sch. 8 para. 9 in force at 15.12.2014, see [art. 1](#)

10. LUL 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 LUL as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(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 LUL 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, 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.

Commencement Information

110 Sch. 8 para. 10 in force at 15.12.2014, see [art. 1](#)

11.—(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 5(1) for the relevant part of the authorised works giving rise to EMI (unless LUL 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), LUL 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 LUL’s compliance with sub-paragraph (3)—

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- (a) LUL 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 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
 - (b) Network Rail must make available to LUL all information in the possession of Network Rail reasonably requested by LUL in respect of Network Rail's apparatus identified under sub-paragraph (a); and
 - (c) Network Rail must allow LUL 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 5(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 LUL 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) LUL'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) LUL must afford reasonable facilities to Network Rail for access to the LUL's apparatus in the investigation of such EMI;
 - (b) Network Rail must afford reasonable facilities to LUL for access to Network Rail's apparatus in the investigation of such EMI; and
 - (c) Network Rail must make available to LUL any additional material information in its possession reasonably requested by LUL 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 LUL 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 LUL in accordance with paragraph 6.
- (9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(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 10(a) any modifications to Network Rail's apparatus under this paragraph are deemed to be protective works referred to in that paragraph.
- (11) In relation to any dispute arising under this paragraph the reference in article 48 (arbitration) to the Institution of Civil Engineers is to be read as a reference to the Institution of Electrical Engineers.

Commencement Information

I11 Sch. 8 para. 11 in force at 15.12.2014, see [art. 1](#)

12. LUL 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.

Commencement Information

I12 Sch. 8 para. 12 in force at 15.12.2014, see [art. 1](#)

13. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to LUL 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, LUL 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.

Commencement Information

I13 Sch. 8 para. 13 in force at 15.12.2014, see [art. 1](#)

14. 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 LUL, are to be repaid by LUL to Network Rail.

Commencement Information

I14 Sch. 8 para. 14 in force at 15.12.2014, see [art. 1](#)

15.—(1) LUL 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 47 (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 LUL or of any person in its employment or of its contractors or others whilst engaged upon a specified work,

and LUL 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 LUL 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 LUL from any liability under the provisions of this sub-paragraph.

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(2) Network Rail must give LUL 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 LUL.

(3) The sums payable by LUL 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 (licences) of the Railways Act 1993.

Commencement Information

I15 Sch. 8 para. 15 in force at 15.12.2014, see [art. 1](#)

16. Network Rail must, on receipt of a request from LUL, from time to time provide LUL free of charge with written estimates of the costs, charges, expenses and other liabilities for which LUL is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable LUL 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).

Commencement Information

I16 Sch. 8 para. 16 in force at 15.12.2014, see [art. 1](#)

17. 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 LUL under this Part of this Schedule or increasing the sums so payable.

Commencement Information

I17 Sch. 8 para. 17 in force at 15.12.2014, see [art. 1](#)

18. LUL 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 45 (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.

Commencement Information

I18 Sch. 8 para. 18 in force at 15.12.2014, see [art. 1](#)

19. LUL 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 LUL of—

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

Commencement Information

I19 Sch. 8 para. 19 in force at 15.12.2014, see [art. 1](#)

PART 2

PROTECTION FOR THE LONDON BOROUGHS OF LAMBETH, SOUTHWARK AND WANDSWORTH

20.—(1) The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between LUL and the appropriate Council.

(2) In this Part of this Schedule—

“the appropriate Council” means—

- (a) the Council of the London Borough of Lambeth, in relation to any authorised work constructed in the area of that council;
- (b) the Council of the London Borough of Southwark, in relation to any authorised work constructed in the area of that council; or
- (c) the Council of the London Borough of Wandsworth, in relation to any authorised work constructed in the area of that council;

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

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

Commencement Information

I20 Sch. 8 para. 20 in force at 15.12.2014, see [art. 1](#)

21. Before commencing to construct any scheduled work LUL must consult the appropriate Council about—

- (a) the programme for the construction of that work so as to secure, so far as may be reasonably practicable, that the duration of any disturbance occasioned by, or in connection with, that construction is reduced to a minimum; and
- (b) the land within the limits of deviation to be occupied and used by LUL as temporary working sites for the purpose of that construction, the period for which and the manner in

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which each site is to be used and the steps to be taken by LUL in order to mitigate any injury to amenity.

Commencement Information

I21 Sch. 8 para. 21 in force at 15.12.2014, see [art. 1](#)

22. LUL must consult the appropriate Council as to—

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

and such soil or waste material must not be disposed of by LUL in the appropriate Council’s area in any manner that is objected to in writing by the appropriate Council.

Commencement Information

I22 Sch. 8 para. 22 in force at 15.12.2014, see [art. 1](#)

23. Before commencing to construct any authorised work which will involve highway operations, LUL must consult the appropriate Council—

- (a) as to the time when that work will be commenced;
- (b) as to the extent of the surface of the highway which it may be reasonably necessary for LUL to occupy in the construction of that work; and
- (c) as to the conditions under which that work will be constructed,

so as to avoid or minimise inconvenience to the public and to ensure the safety of the public and LUL must also consult the appropriate Council on the measures which the appropriate Council considers necessary to discharge its duty to co-ordinate street works under section 59 of the 1991 Act (general duty of street authority to co-ordinate works) and its network management duty under section 16 of the 2004 Act (the network management duty).

Commencement Information

I23 Sch. 8 para. 23 in force at 15.12.2014, see [art. 1](#)

24. Any such highway must be reinstated by LUL in a manner reasonably approved by the appropriate Council and to its reasonable satisfaction.

Commencement Information

I24 Sch. 8 para. 24 in force at 15.12.2014, see [art. 1](#)

25. LUL must not, except with the consent of the appropriate Council, deposit any soil, subsoil or materials or stand any vehicle or plant on any highway (except on so much of it as is for the time being temporarily stopped up or occupied under the powers conferred by this Order) so as to obstruct the use of the highway by any person or, except with the same consent, deposit any soil, subsoil or materials on any highway except within a hoarding.

Commencement Information

I25 Sch. 8 para. 25 in force at 15.12.2014, see [art. 1](#)

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

Commencement Information

I26 Sch. 8 para. 26 in force at 15.12.2014, see [art. 1](#)

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

Commencement Information

I27 Sch. 8 para. 27 in force at 15.12.2014, see [art. 1](#)

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

Commencement Information

I28 Sch. 8 para. 28 in force at 15.12.2014, see [art. 1](#)

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

Commencement Information

I29 Sch. 8 para. 29 in force at 15.12.2014, see [art. 1](#)

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

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PART 3

PROTECTION FOR THE ENVIRONMENT AGENCY

30.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between LUL 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;

“environmental duties” means the Agency’s duties in the Environment Act 1995⁽⁵⁾, the Natural Environment and Rural Communities Act 2006⁽⁶⁾ and the Water Environment (Water Framework Directive) (England and Wales) Regulations 2003⁽⁷⁾;

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

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

“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; and

“watercourse” includes all drains.

Commencement Information

I30 Sch. 8 para. 30 in force at 15.12.2014, see [art. 1](#)

31.—(1) Before beginning to construct any specified work, LUL 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 41.

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

(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

⁽⁵⁾ 1995 c. 25.

⁽⁶⁾ 2006 c. 16.

⁽⁷⁾ S.I. 2003/3242.

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- (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).

Commencement Information

I31 Sch. 8 para. 31 in force at 15.12.2014, see [art. 1](#)

32. Without limitation on the scope of paragraph 31, the requirements which the Agency may make under that paragraph include conditions requiring LUL 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.

Commencement Information

I32 Sch. 8 para. 32 in force at 15.12.2014, see [art. 1](#)

33.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 32, 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) LUL 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 LUL at LUL's own expense to comply with the requirements of this Part of this Schedule or (if LUL so 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 37, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon LUL, 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 LUL.

(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

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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.

Commencement Information

I33 Sch. 8 para. 33 in force at 15.12.2014, see [art. 1](#)

34.—(1) Subject to sub-paragraph (5) LUL 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 LUL 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 LUL is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require LUL to repair and restore the work, or any part of such work, or (if LUL so 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 37, 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 LUL, LUL 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 LUL.

(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 prevented by the powers conferred by 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.

Commencement Information

I34 Sch. 8 para. 34 in force at 15.12.2014, see [art. 1](#)

35. Subject to paragraph 37, 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 LUL to the reasonable satisfaction of the Agency and if LUL fails to do so, the Agency may make good the impairment or damage and recover from LUL the expense reasonably incurred by it in doing so.

Commencement Information

I35 Sch. 8 para. 35 in force at 15.12.2014, see [art. 1](#)

36.—(1) LUL 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 LUL 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 37, 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, LUL fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from LUL the expense reasonably incurred by it in doing so.

(4) Subject to paragraph 37, 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 LUL the reasonable cost of so doing provided that notice specifying those steps is served on LUL as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

Commencement Information

I36 Sch. 8 para. 36 in force at 15.12.2014, see [art. 1](#)

37. Nothing in paragraphs 33(4), 34(3), 35, 36(3) and 36(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 LUL such consent not to be unreasonably withheld or delayed.

Commencement Information

I37 Sch. 8 para. 37 in force at 15.12.2014, see [art. 1](#)

38. LUL 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.

Commencement Information

I38 Sch. 8 para. 38 in force at 15.12.2014, see [art. 1](#)

39.—(1) Without affecting the other provisions of this Part of this Schedule, LUL 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

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(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 LUL, its contractors, agents or employees whilst engaged upon the work.

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

Commencement Information

I39 Sch. 8 para. 39 in force at 15.12.2014, see [art. 1](#)

40. The fact that any work or thing has been executed or done by LUL 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 LUL from any liability under the provisions of this Part of this Schedule.

Commencement Information

I40 Sch. 8 para. 40 in force at 15.12.2014, see [art. 1](#)

41. Any dispute arising between LUL and the Agency under this Part of this Schedule, if the parties agree, is to be determined by arbitration under article 48 (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 LUL or the Agency, after notice in writing by one to the other.

Commencement Information

I41 Sch. 8 para. 41 in force at 15.12.2014, see [art. 1](#)

PART 4

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Interpretation

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

(2) The provisions of Schedule 7 (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.

Commencement Information

I42 Sch. 8 para. 42 in force at 15.12.2014, see [art. 1](#)

43. In this Part of this Schedule—

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“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⁽⁸⁾) 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—
 - (i) mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
 - (ii) mains, pipes or other apparatus that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991⁽⁹⁾; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

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

“functions” includes powers and duties;

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

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

“undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
 - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽¹⁰⁾;
 - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
 - (d) 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.

Commencement Information

I43 Sch. 8 para. 43 in force at 15.12.2014, see [art. 1](#)

⁽⁸⁾ 1989 c. 29.

⁽⁹⁾ 1991 c. 56.

⁽¹⁰⁾ 1986 c. 44.

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On-street apparatus

44. This Part of this Schedule does not apply to anything done or proposed to be done in relation to or affecting apparatus in respect of which the relations between LUL and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Commencement Information

I44 Sch. 8 para. 44 in force at 15.12.2014, see [art. 1](#)

Acquisition of land

45.—(1) Regardless of any provision in this Order or anything shown on the deposited plans LUL must not acquire any apparatus other than by agreement with the undertaker.

(2) LUL may, in the exercise of the powers conferred by this Order, acquire or appropriate any interest in any land in which any apparatus is placed and, following the removal of such apparatus in accordance with the provisions of this Part of this Schedule, any rights in that land relating to that apparatus are extinguished, but that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to use, maintain or renew 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.

Commencement Information

I45 Sch. 8 para. 45 in force at 15.12.2014, see [art. 1](#)

Removal of apparatus

46.—(1) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, LUL 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 plans 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) LUL 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 LUL and for the subsequent use, maintenance and renewal of that apparatus.

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of LUL, or LUL is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), 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 LUL, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) The obligation imposed on the undertaker under sub-paragraph (2) does not extend to the exercise by the undertaker of any power to acquire any land or rights in land by compulsory purchase order.

(4) Any alternative apparatus to be constructed in land of LUL 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 LUL or in default of agreement settled by arbitration in accordance with article 48 (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 48 (arbitration), and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraphs (1) or (2), proceed with all reasonable despatch to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by LUL to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if LUL 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, may be executed by LUL with the prior written consent of the undertaker (which must not be unreasonably withheld or delayed and is to be subject to any such conditions as are reasonable and proper to protect the apparatus) in accordance with plans and in a position agreed between the undertaker and the promoter or, in default of agreement, determined by arbitration, with all reasonable despatch under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) In carrying out any work under sub-paragraph (6) LUL must comply with all statutory obligations which would have been applicable had the works been carried out by the undertaker.

(8) 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 LUL.

(9) Nothing in sub-paragraph (6) authorises LUL 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 600 millimetres of the apparatus.

Commencement Information

I46 Sch. 8 para. 46 in force at 15.12.2014, see [art. 1](#)

Facilities and rights for alternative apparatus

47.—(1) Where, in accordance with the provisions of this Part of this Schedule, LUL affords to an undertaker facilities and rights for the construction, use, maintenance and renewal in land of LUL of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between LUL and the undertaker in question or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

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

- (a) give effect to all reasonable requirements of LUL for ensuring the safety and efficient operation of the authorised works and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of LUL 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 across or along the authorised works for which the alternative apparatus is to be substituted and to any other reasonable requirements of the undertaker.

(3) If the facilities and rights to be afforded by LUL 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

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opinion of the arbitrator more or 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 to or by LUL by or to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Commencement Information

I47 Sch. 8 para. 47 in force at 15.12.2014, see [art. 1](#)

Retained apparatus: protection and plan approval

48.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph [46\(1\)](#) that are near to, or will or may affect, any apparatus the removal of which has not been required by LUL under paragraph [46\(1\)](#), LUL must submit to the undertaker in question plans of those works.

(2) Those works are to be executed only in accordance with the plans 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 the plans 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 LUL, reasonably requires the removal of any apparatus and gives written notice to LUL of that requirement, paragraphs [42](#) to [47](#) apply as if the removal of the apparatus had been required by LUL under paragraph [46\(1\)](#).

(5) Nothing in this paragraph precludes LUL 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, new plans instead of the plans previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plans.

(6) LUL 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 plans 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.

(7) Nothing in sub-paragraph (6) entitles LUL to carry out works to any apparatus but, upon receipt of notice from LUL, the undertaker must proceed to carry out such works as may be required without unreasonable delay.

Commencement Information

I48 Sch. 8 para. 48 in force at 15.12.2014, see [art. 1](#)

Expenses

49.—(1) Subject to the following provisions of this paragraph, LUL must repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with—

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

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

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

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 LUL or, in default of agreement, is not determined by arbitration in accordance with article 48 (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, except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by the existing apparatus; and
- (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 as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June 1992, as revised and re-issued from time to time.

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(6) In any case where work is carried out by LUL under paragraphs 46(6) to (8) and, if such work had been carried out by the undertaker, the repayment made to the undertaker under sub-paragraph (1) would fall to be reduced under sub-paragraphs (3) to (5), the undertaker must pay to the LUL such sum as represents the amount of that reduction.

Commencement Information

I49 Sch. 8 para. 49 in force at 15.12.2014, see [art. 1](#)

Indemnity

50.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the authorised works, 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, LUL must bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply, and must—

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

by reason or in consequence of any such damage or interruption; and the fact that any act or thing may have been done by the undertaker on behalf of LUL or in accordance with plans approved by the undertaker or in accordance with any requirement of the undertaker or under its supervision does not, subject to sub-paragraph (2), excuse LUL from any liability under the provisions of this paragraph.

(2) Nothing in sub-paragraph (1) imposes any liability on LUL 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 LUL reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of LUL, 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.

Commencement Information

I50 Sch. 8 para. 50 in force at 15.12.2014, see [art. 1](#)

Access

51. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed LUL must provide such alternative means of access to that apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

Commencement Information

I51 Sch. 8 para. 51 in force at 15.12.2014, see [art. 1](#)

Cooperation

52. Where in consequence of the proposed construction of any of the authorised works, LUL or the undertaker requires the removal of apparatus under paragraph 46(1) or the undertaker makes requirements for the protection or alteration of apparatus under paragraph 48(2), LUL must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and the undertaker must use all reasonable endeavours to co-operate with LUL for that purpose.

Commencement Information

I52 Sch. 8 para. 52 in force at 15.12.2014, see [art. 1](#)

Exercise of safeguarding and survey powers

53.—(1) LUL must, so far as is reasonably practicable, so exercise the powers conferred by article 18 (protective works to buildings) so as not to obstruct or render less convenient the access to any apparatus.

(2) LUL must not, in the exercise of the powers conferred by section 11(3) of the 1965 Act (powers of entry), as applied by this Order, or by article 20 (power to survey and investigate land, etc.), make any trial holes which interfere with any apparatus without the consent of the undertaker (which must not be unreasonably withheld).

Commencement Information

I53 Sch. 8 para. 53 in force at 15.12.2014, see [art. 1](#)

Arbitration

54. Any difference arising between LUL and an undertaker under this Part of this Schedule (other than a difference as to its meaning or construction) must be determined by arbitration in the manner provided by article 48 (arbitration) and in determining any difference under this Part of this Schedule the arbitrator may, if the arbitrator thinks fit, require LUL to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with the use of any apparatus.

Commencement Information

I54 Sch. 8 para. 54 in force at 15.12.2014, see [art. 1](#)

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PART 5

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

55.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between LUL 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⁽¹¹⁾;

“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.

Commencement Information

155 Sch. 8 para. 55 in force at 15.12.2014, see [art. 1](#)

56.—(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,

LUL 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.

⁽¹¹⁾ 2003 c. 21. See section 106.

(2) Nothing in sub-paragraph (1) imposes any liability on LUL 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 LUL 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 LUL 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 LUL and the operator under this paragraph is to be referred to and settled by arbitration under article 48 (arbitration).

Commencement Information

I56 Sch. 8 para. 56 in force at 15.12.2014, see [art. 1](#)

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

- (a) any apparatus in respect of which the relations between LUL 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.

Commencement Information

I57 Sch. 8 para. 57 in force at 15.12.2014, see [art. 1](#)

PART 6

PROTECTION FOR THE PORT OF LONDON AUTHORITY

General

58. In this Part of this Schedule—

“construction” includes execution, placing, relaying, renewal and works of maintenance and, in its application to a specified work which includes or comprises any operation, means the carrying out of that operation and “construct” and “constructed” have corresponding meanings;

“the PLA” means the Port of London Authority;

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

“specified work” means any authorised work, wherever situated, any part of which—

- (a) is, or may be, in, on, under or over the surface of land below mean high water level forming part of the River Thames; or
- (b) may affect the River Thames or any function of the PLA,
including any projection over the River Thames by any authorised work or any plant or machinery.

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Commencement Information

I58 Sch. 8 para. 58 in force at 15.12.2014, see [art. 1](#)

59. The provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between LUL and the PLA.

Commencement Information

I59 Sch. 8 para. 59 in force at 15.12.2014, see [art. 1](#)

Approval of detailed design

60.—(1) LUL must not commence any specified work until plans of the work have been approved in writing by the PLA.

(2) LUL must submit to the PLA plans of the specified work and such further particulars as the PLA may, within 28 days starting with the day on which plans are submitted under this sub-paragraph, reasonably require, and the particulars so supplied are to provide all information necessary to enable the PLA to determine whether approval should be given and, if so, whether conditions should be imposed.

(3) Any approval of the PLA required under this paragraph must not be unreasonably withheld but may be given subject to such reasonable modifications, terms and conditions as the PLA may make for the protection of—

- (a) traffic in, or the flow or regime of, the River Thames;
- (b) the use of its land, or the River Thames, for the purposes of performing its functions; or
- (c) the performance of any of its functions connected with environmental protection.

(4) Requirements made under sub-paragraph (3) may include conditions as to—

- (a) the proposed location of any temporary work and its dimensions;
- (b) the programming of temporary works;
- (c) the removal of any temporary work and the undertaking by LUL of any related work or operation that the PLA considers to be necessary for the purpose of removing or preventing any obstruction to navigation;
- (d) the relocation, provision and maintenance of works, moorings, apparatus and equipment necessitated by the specified work; and
- (e) the expiry of the approval if LUL does not commence construction or carrying out of the approved specified work within a prescribed period.

(5) Subject to sub-paragraph (6), an application for approval under this paragraph is deemed to have been refused if it is neither given nor refused within 28 days of the specified day.

(6) An approval of the PLA under this paragraph is not deemed to have been unreasonably withheld if approval within the time limited by sub-paragraph (5) has not been given pending the outcome of any consultation on the approval in question that the PLA is obliged to carry out in the proper exercise of its functions.

(7) LUL must carry out all operations for the construction of any specified work without unnecessary delay and to the reasonable satisfaction of the PLA so that traffic in, or the flow or regime of, the River Thames, and the exercise of the PLA's functions, do not suffer more interference than is reasonably practicable. The PLA is entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey those operations and LUL must provide all reasonable facilities to enable that inspection and survey to take place.

- (8) In this paragraph “the specified day” means, in relation to any specified work—
- (a) the day on which plans and sections of that work are submitted to the PLA under sub-paragraph (1); or
 - (b) the day on which LUL provides the PLA with all further particulars of the work that have been requested by the PLA under that sub-paragraph,

whichever is the later.

Commencement Information

I60 Sch. 8 para. 60 in force at 15.12.2014, see [art. 1](#)

61.—(1) This paragraph applies to any specified work that includes or is ancillary to any jetty modification comprised in Work No. 10.

(2) When LUL submits for approval under paragraph 60 plans of any specified work to which this paragraph applies it must state whether the work is intended to be temporary or permanent.

(3) If at any time before the completion of construction of the authorised works LUL decides that, contrary to the statement given under sub-paragraph (2), a work to which this paragraph applies should be permanent or temporary, as the case may be, it must without delay apply to the PLA for confirmation of approval of the specified work.

(4) On making any application under this paragraph LUL must provide the PLA with any revised plans of the specified work together with such further information as the PLA may, within 28 days starting with the date on which the application is made, reasonably require.

(5) Any approval of the PLA required under this paragraph must not be unreasonably withheld but paragraph 60(3) applies.

(6) Conditions imposed by the PLA under paragraph 60(3) or sub-paragraph (5) may include (in the case of a permanent work) conditions as to the future ownership and maintenance of the work, and in the absence of appropriate arrangements regarding ownership and maintenance it is reasonable for the PLA to withhold approval under this paragraph.

(7) The removal of any temporary work to which this paragraph applies and any required removal of materials, plant and equipment or making good must be carried out to the reasonable satisfaction, and subject to the supervision (if given), of the PLA.

Commencement Information

I61 Sch. 8 para. 61 in force at 15.12.2014, see [art. 1](#)

Discharges, etc.

62.—(1) LUL must not without the consent of the PLA exercise the powers conferred by article 16 (discharge of water) so as to—

- (a) deposit in or allow to fall or be washed into the River Thames any gravel, soil or other material;
- (b) discharge or allow to escape either directly or indirectly into the River Thames any offensive or injurious matter in suspension or otherwise; or
- (c) directly or indirectly discharge any water into the River Thames.

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(2) LUL must not without the consent of the PLA exercise the powers conferred by article 17 (water abstraction) so as to—

- (a) adversely affect the regime of the River Thames; or
- (b) impair the effective operation for drainage purposes of any drainage work, channel or watercourse.

(3) Any consent of the PLA under this paragraph must not be unreasonably withheld but may be given subject to such terms and conditions as the PLA may reasonably impose.

(4) Any consent under this paragraph is deemed to have been given if it is neither given nor refused (or is refused but without an indication of the grounds for refusal) within 35 days of the day on which the request for consent is submitted under sub-paragraph (1).

(5) Any discharge of water under article 16 or, as the case may be, any abstraction under article 17 is subject to the terms of any conditions attached to a consent given under this paragraph to that discharge or abstraction.

Commencement Information

I62 Sch. 8 para. 62 in force at 15.12.2014, see [art. 1](#)

63. LUL must not, in exercise of the powers conferred by article 16 (discharge of water), or article 17 (water abstraction) damage or interfere with the beds or banks of any watercourse forming part of the River Thames unless such damage or interference is approved as a specified work under this Order or is otherwise approved in writing by the PLA.

Commencement Information

I63 Sch. 8 para. 63 in force at 15.12.2014, see [art. 1](#)

Navigational lights, buoys, etc.

64. Unless and until such time as a specified work is licensed under section 66 of the 1968 Act (licensing of works) or removed, LUL must, at or near that work, and any other work of which LUL is in possession in exercise of any of the powers conferred by this Order (being in either case a work which is below mean high water level), exhibit such lights, lay down such buoys and take such other steps for preventing danger to navigation as the PLA may from time to time reasonably require.

Commencement Information

I64 Sch. 8 para. 64 in force at 15.12.2014, see [art. 1](#)

Directions as to lights

65. Unless and until such time as a specified work is licensed under section 66 of the 1968 Act (licensing of works) or removed, LUL must comply with any reasonable directions of the Harbour Master from time to time with regard to the lighting of that specified work, or the screening of such lighting, so as to ensure that it is not a hazard to navigation on the River Thames.

Commencement Information

I65 Sch. 8 para. 65 in force at 15.12.2014, see [art. 1](#)

Removal of temporary works

66. On completion of the construction of any part of a permanent specified work that is below mean high water level, LUL must as soon as practicable remove—

- (a) any temporary specified work carried out only for the purposes of that part of the permanent work; and
- (b) any materials, plant and equipment used for such construction,

and must make good the site to the reasonable satisfaction of the PLA.

Commencement Information

I66 Sch. 8 para. 66 in force at 15.12.2014, see [art. 1](#)

Protective action

67.—(1) If any specified work—

- (a) is constructed otherwise than in accordance with the requirements of this Schedule or with any condition in an approval given under paragraph 60(3); or
- (b) during construction gives rise to sedimentation, scouring, currents or wave action, which would be materially detrimental to traffic in, or the flow or regime of, the River Thames,

then the PLA may by notice in writing require LUL at LUL's own expense to comply with the remedial requirements specified in the notice.

(2) The requirements that may be specified in a notice given under sub-paragraph (1) are—

- (a) in the case of a specified work to which sub-paragraph (1)(a) applies, such requirements as may be specified in the notice for the purpose of giving effect to the requirements of—
 - (i) this Schedule; or
 - (ii) the condition that has been breached; or
- (b) in any case within sub-paragraph (1)(b), such requirements as may be specified in the notice for the purpose of preventing, mitigating or making good the sedimentation, scouring, currents or wave action so far as required by the needs of traffic in, or the flow or regime of, the River Thames.

(3) If LUL does not comply with a notice under sub-paragraph (1), or is unable to do so then the PLA may in writing require LUL to—

- (a) remove, alter or pull down the specified work, and where the specified work is removed to restore the site of that work (to such extent as the PLA reasonably requires) to its former condition; or
- (b) take such other action as the PLA may reasonably specify for the purpose of remedying the non-compliance to which the notice relates.

(4) If a specified work gives rise to environmental impacts over and above those anticipated by any environmental document, LUL must, in compliance with its duties under any enactment, take

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such action as is necessary to prevent or mitigate those environmental impacts and in so doing must consult and seek to agree the necessary measures with the PLA.

(5) If the PLA becomes aware that any specified work is causing an environmental impact over and above those anticipated by any environmental document, the PLA must notify LUL of that environmental impact, the reasons why the PLA believes that the environmental impact is being caused by the specified work and of measures that the PLA reasonably believes are necessary to counter or mitigate that environmental impact. LUL must implement either the measures that the PLA has notified to LUL or such other measures as LUL believes are necessary to counter the environmental impact identified, giving reasons to the PLA as to why it has implemented such other measures.

(6) In this paragraph “environmental document” means—

- (a) the environmental statement prepared for the purposes of the application for this Order together with any supplementary environmental statement or other document so prepared by way of clarification or amplification of the environmental statement; and
- (b) any other document containing environmental information provided by LUL to the PLA for the purposes of any approval under paragraph 60.

Commencement Information

I67 Sch. 8 para. 67 in force at 15.12.2014, see [art. 1](#)

68.—(1) If a specified work is abandoned or falls into decay, the PLA may by notice in writing require LUL to take such reasonable steps as may be specified in the notice either to repair or restore the specified work, or any part of it, or to remove the specified work and (to such extent and within such limits as the PLA reasonably requires) restore the site of that work to its condition prior to the construction of the specified work.

(2) If any specified work is in such condition that it is, or is likely to become, a danger to or an interference with navigation in the River Thames, the PLA may by notice in writing require LUL 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 LUL so elects, to remove the specified work and (to such extent as the PLA reasonably requires) to restore the site to its former condition.

(3) If on the expiration of such reasonable period as may be specified in a notice under this paragraph the work specified in the notice has not been completed to the satisfaction of the PLA, the PLA may undertake that work and any expenditure reasonably incurred by the PLA in so doing is recoverable from LUL.

Commencement Information

I68 Sch. 8 para. 68 in force at 15.12.2014, see [art. 1](#)

Facilities for navigation

69.—(1) LUL must not in the exercise of the powers conferred by this Order interfere with any marks, lights or other navigational aids in the river without the consent of the PLA, and must ensure that access to such aids remains available during and following construction of any specified work.

(2) LUL must provide at any specified work, or must afford reasonable facilities at such work (including an electricity supply) for the PLA to provide at LUL’s cost, from time to time

such navigational lights, signals, radar or other apparatus for the benefit, control and direction of navigation as the PLA may deem necessary by reason of the construction and presence of the specified work and must ensure access remains available to such facilities during and following construction of the specified work until such time as the specified work is licensed under section 66 of the 1968 Act (licensing of works) or removed.

Commencement Information

I69 Sch. 8 para. 69 in force at 15.12.2014, see [art. 1](#)

Survey of riverbed

70.—(1) Before the commencement of construction of the first specified work below mean high water level to be constructed following approval under paragraph 60, the PLA may, at LUL's expense (such expense to be that which is reasonably incurred), carry out a survey of such parts of the River Thames as might be affected by sedimentation, scouring, currents or wave action that might result from the construction of such of the authorised works as would constitute specified works below mean high water level if they were to be constructed, for the purposes of establishing the condition of the River Thames at that time.

(2) Before the commencement of construction of any other specified work approved under paragraph 60, the PLA may, at LUL's expense (such expense to be that which is reasonably incurred), carry out a survey of such parts of the River Thames as might be affected by sedimentation, scouring, currents or wave action resulting from that specified work for the purpose of establishing the condition of the River Thames at that time.

(3) The PLA may, at LUL's expense (such expense to be that which is reasonably incurred), carry out such surveys of the River Thames as are reasonably required during the construction of any specified work to ascertain the effect of that specified work on the River Thames and the PLA must make available to LUL the results of any such survey.

(4) After completion of, respectively, any specified work and all the specified works constructed under this Order, the PLA may, at LUL's expense (such expense to be that which is reasonably incurred) carry out a further survey of the parts of the River Thames which were surveyed prior to the construction of that work, or as the case may be a survey of the completed specified works as so constructed, for the purpose of establishing the condition of the River Thames and the effect that the specified work is, or as the case may be the specified works are, having on navigation, the flow and the regime of the River Thames and the exercise of the PLA's functions.

(5) The PLA must not under this paragraph carry out a survey of any part of the River Thames as respects which LUL has provided to the PLA survey material which the PLA is satisfied establishes the condition of the River Thames, and in the case of a survey under sub-paragraph (3), the effect of the specified work, or as the case may be the specified works.

Commencement Information

I70 Sch. 8 para. 70 in force at 15.12.2014, see [art. 1](#)

Interaction with other infrastructure projects

71.—(1) This paragraph applies when—

- (a) LUL is carrying out the authorised works;

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- (b) any other person (an “undertaker”) is taking preliminary action or carrying out works or operations (any of which is an “other work”) preparatory to or in connection with any other infrastructure project for which authorisation has been sought or given; and
- (c) both the authorised works and the other work are being carried out in, on, over, under or making use of the River Thames at the same time.

(2) When this paragraph applies LUL must participate in and assist with the taking of reasonable measures in order to ensure that the safety of navigation on the River Thames is not adversely affected by reason of the carrying out of the authorised works and any other work.

(3) The obligations of LUL under this paragraph commence at such time as an undertaker commences any other work whilst the authorised works are being carried out in, on, over, under or making use of the River Thames and continue from time to time whenever sub-paragraph (1) (c) applies.

(4) The reasonable measures referred to in sub-paragraph (2) are to be such as—

- (a) are agreed between the PLA and LUL or, failing such agreement, as are determined in accordance with article 48 (arbitration); and
- (b) proportionately reflect the extent to which, as between the authorised works and any other work, the need for any measure is attributable to the carrying out of the authorised works.

(5) LUL and the PLA must each take such steps as are reasonably practicable, in so far as compatible with their statutory functions, to secure that an undertaker assumes or is made subject to obligations in relation to any other work that are equivalent to those placed upon LUL by this paragraph.

Commencement Information

I71 Sch. 8 para. 71 in force at 15.12.2014, see [art. 1](#)

Statutory functions

72. Subject to article 4(9) (power to construct and maintain works) the exercise in, under or over the River Thames by LUL of any of its functions under this Order is subject to—

- (a) any enactment relating to the PLA;
- (b) any byelaw, direction or other requirement made by the PLA or the Harbour Master under any enactment; and
- (c) any other exercise by the PLA or the Harbour Master of any function conferred by or under any enactment.

Commencement Information

I72 Sch. 8 para. 72 in force at 15.12.2014, see [art. 1](#)

Indemnity

73.—(1) LUL is responsible for and must make good to the PLA all costs, charges, damages losses or expenses which may be incurred reasonably or suffered by the PLA by reason of —

- (a) the construction or operation of a specified work or its failure;
- (b) the exercise of any other power under this Order; or

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- (c) any act or omission of LUL, its employees, contractors or agents or others whilst engaged on the construction or operation of a specified work or dealing with any failure of a specified work,

and LUL must indemnify the PLA from and against all claims and demands arising out of or in connection with the specified works or any such failure, act or omission.

(2) The fact that any act or thing may have been done—

- (a) by the PLA on behalf of LUL; or
- (b) by LUL, its employees, contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the PLA, or in a manner approved by the PLA, or under its supervision or the supervision of its duly authorised representative,

does not (if it was done or required without negligence on the part of the PLA or its duly authorised representative, employee, contractor or agent) excuse LUL from liability under the provisions of this paragraph.

(3) The PLA must give LUL reasonable notice of any such claim or demand as is referred to in sub-paragraph (1) and no settlement or compromise of it is to be made without the prior consent of LUL.

Commencement Information

I73 Sch. 8 para. 73 in force at 15.12.2014, see [art. 1](#)

Compensation for river bed

74. Regardless of article [4\(9\)\(a\)](#), and unless otherwise agreed in writing between LUL and the PLA, compensation is payable to the PLA in respect of any specified work below mean high water level and any rights required in connection with such a specified work as if LUL had been required—

- (a) to obtain a licence for the work under section 66 (licensing of works) of the 1968 Act; and
- (b) to pay consideration for the licence determined in accordance with the provisions of section 67 (consideration for licence) of that Act;

and the PLA's reasonable costs incurred in connection with the determination of such compensation is recoverable from LUL.

Commencement Information

I74 Sch. 8 para. 74 in force at 15.12.2014, see [art. 1](#)

Disposals, etc.

75. LUL must within 7 days after the completion of any sale, agreement or other transaction under paragraph (1) or (2) of article [41](#) (powers of disposal, agreements for operation, etc.) in relation to which any powers, rights and obligations of LUL are transferred to another party, notify the PLA in writing, and the notice must include particulars of the other party to the transaction under article [41](#), the general nature of the transaction and details of the extent, nature and scope of the works or functions sold, transferred or otherwise dealt with.

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Commencement Information

I75 Sch. 8 para. 75 in force at 15.12.2014, see [art. 1](#)

Disputes

76. Any dispute arising between LUL and the PLA under this Part of this Schedule is to be determined by arbitration as provided in article 48 (arbitration).

Commencement Information

I76 Sch. 8 para. 76 in force at 15.12.2014, see [art. 1](#)

PART 7

PROTECTION FOR THE MARINE MANAGEMENT ORGANISATION

77.—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between LUL and the MMO.

(2) In this Part of this Schedule—

“the MMO” means the Marine Management Organisation;

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

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

“specified work” means so much of any authorised work as is—

- (a) a licensable marine activity under section 66 (licensable marine activities) of the 2009 Act;
 - (b) not exempt from requiring a marine licence by virtue of an order made under section 74 (exemptions specified by order) of the 2009 Act; and
 - (c) over, in, on, or under that part of the UK marine area that is within the river area; and
- “UK marine area” has the definition given to it in section 42 (UK marine area) of the 2009 Act.

Commencement Information

I77 Sch. 8 para. 77 in force at 15.12.2014, see [art. 1](#)

78.—(1) Before beginning to construct or carry out any specified work, LUL must submit to the MMO plans of the specified work and such further particulars available to LUL as the MMO may within 28 days of the submission of the plans reasonably require.

(2) Any specified work must not be constructed or carried out except in accordance with such plans as may be approved in writing by the MMO, or determined under paragraph 85.

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

- (a) must not be unreasonably withheld;

- (b) must be given or refused within 3 months of the specified day, and in the case of a refusal, will be accompanied by a statement of the grounds of refusal; and
 - (c) may be given subject to such reasonable requirements as the MMO may make for the protection of the cleanliness, safety, productivity and biological diversity of the River Thames or otherwise in the discharge of the MMO's statutory duties.
- (4) The MMO 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).
- (5) In this paragraph, "the specified day" means, in relation to any specified work—
- (a) the day on which plans of that work are submitted to the MMO under sub-paragraph (1); or
 - (b) the day on which LUL provides the MMO with all further particulars of the specified work that have been requested by the MMO under that sub-paragraph,
- whichever is the later.

Commencement Information

178 Sch. 8 para. 78 in force at 15.12.2014, see [art. 1](#)

- 79.** Without limitation on the scope of paragraph 78, the requirements which the MMO may make under that paragraph include conditions in relation to any specified work as to—
- (a) the method or manner in which it is carried out;
 - (b) the times of year at which it may be carried out;
 - (c) the handling (other than disposal) of dredged material; and
 - (d) appropriate and proportionate mitigation measures to minimise any adverse impacts on the marine environment, marine biota (in particular, migratory fish species) and archaeological and heritage assets.

Commencement Information

179 Sch. 8 para. 79 in force at 15.12.2014, see [art. 1](#)

80. Where any specified work involves dredging, the plans submitted under paragraph 78(1) must include the results of laboratory testing of the material to be dredged. This testing must be undertaken by a laboratory which is accredited to the standard required by the MMO and the tests undertaken must be to the standard accepted by the MMO.

Commencement Information

180 Sch. 8 para. 80 in force at 15.12.2014, see [art. 1](#)

- 81.—**(1) Subject to sub-paragraph (2), any specified work must be constructed or carried out—
- (a) in accordance with the plans approved in writing by the MMO or determined under this Part of this Schedule; and
 - (b) to the reasonable satisfaction of the MMO.
- (2) LUL must give to the MMO not less than 14 days' notice in writing of LUL's intention to commence construction or the carrying out of any specified work and LUL must also give to the MMO notice in writing of the completion of the work not later than 7 days after the date on which the work is completed.

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Commencement Information

I81 Sch. 8 para. 81 in force at 15.12.2014, see [art. 1](#)

82. Where there is any actual or potential conflict between any requirements imposed by the Environment Agency under Part 3 of this Schedule and any requirement made by the MMO under paragraph 78, the MMO must liaise with the Environment Agency in order to seek expeditiously to remove that actual or potential conflict but if it persists, then the requirement of the MMO may be referred for determination under paragraph 85.

Commencement Information

I82 Sch. 8 para. 82 in force at 15.12.2014, see [art. 1](#)

83. Where there is any actual or potential conflict between any terms and conditions imposed by the Port of London Authority under Part 6 of this Schedule and any requirement made by the MMO under paragraph 78, the MMO must liaise with the Port of London Authority in order to seek expeditiously to remove that actual or potential conflict but if it persists, then the requirement of the MMO may be referred for determination under paragraph 85.

Commencement Information

I83 Sch. 8 para. 83 in force at 15.12.2014, see [art. 1](#)

84. LUL must indemnify the MMO in respect of all costs, charges and expenses which the MMO may reasonably incur or have to pay or which it may sustain—

- (a) for any sediment analyses and testing including the interpretation of the results;
- (b) in the examination or approval of plans under this Part of this Schedule; and
- (c) in the inspection of the construction of the specified works under sections 246 (power to board and inspect vessels and marine installations) to 248 (power to enter and inspect vehicles) of the 2009 Act.

Commencement Information

I84 Sch. 8 para. 84 in force at 15.12.2014, see [art. 1](#)

85. Any dispute arising between LUL and the MMO under this Part of this Schedule is to be determined by arbitration under article 48 (arbitration) if the parties agree, 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 LUL or the MMO, after giving notice in writing by one to the other.

Commencement Information

I85 Sch. 8 para. 85 in force at 15.12.2014, see [art. 1](#)

Changes to legislation:

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Changes and effects yet to be applied to :

- Sch. 8 Pt. 5 para. 55(2) words inserted by [S.I. 2017/1011 Sch. 1 para. 27\(2\)\(c\)](#) (This amendment comes into force on the day on which section 4 of, and Schedule 1 to, the Digital Economy Act 2017 come fully into force. S.I. 2017/1286, reg. 2 brought those provisions fully into force on 28.12.2017)
- Sch. 8 Pt. 5 para. 55(2) words omitted by [S.I. 2017/1011 Sch. 1 para. 27\(2\)\(a\)](#) (This amendment comes into force on the day on which section 4 of, and Schedule 1 to, the Digital Economy Act 2017 come fully into force. S.I. 2017/1286, reg. 2 brought those provisions fully into force on 28.12.2017)
- Sch. 8 Pt. 5 para. 55(2) words substituted by [S.I. 2017/1011 Sch. 1 para. 27\(2\)\(b\)](#) (This amendment comes into force on the day on which section 4 of, and Schedule 1 to, the Digital Economy Act 2017 come fully into force. S.I. 2017/1286, reg. 2 brought those provisions fully into force on 28.12.2017)
- Sch. 8 Pt. 3 para. 30(2) words substituted by [S.I. 2017/407 Sch. 4 para. 5](#)