SCHEDULE 11

PROTECTIVE PROVISIONS

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised works or their construction, 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,

Network Rail must bear and pay the cost reasonably incurred by an operator in making good such damage or restoring the supply and must—

(i) make reasonable compensation to that operator for loss sustained by it; and

(ii) indemnify that operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, that operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on Network Rail 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 Network Rail reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of Network Rail 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 Network Rail and the operator under this Schedule must be referred to and settled by arbitration under article 43 (arbitration).