

SCHEDULES

SCHEDULE 11

FOR PROTECTION OF RAILWAY UNDERTAKERS

PART II

THE UNDERGROUND COMPANIES

16.—(1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between DLRL and LUL, have effect for the protection of the Underground companies.

(2) In this Part of this Schedule—

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

“EMI” means, subject to paragraph 24(1) below, electromagnetic interference with the Underground companies' works and apparatus generated by the operation of the authorised works (including the operation of trains using the new railways comprised in the works) where such interference is of a level which adversely affects the safe operation of the Underground companies' works and apparatus;

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

“LUL” means London Underground Limited;

“maintenance” means works of maintenance and repair that are material to the structures and safe operation of railway property;

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

“PPP company” means a company undertaking to carry out or secure the carrying out of any or all of the work mentioned in section 210(3) of the Greater London Authority Act 1999⁽¹⁾;

“PPP-related third party” means any person with whom arrangements of the type mentioned in section 215(2)(b) of the Greater London Authority Act 1999 are entered into;

“railway property” means any railway belonging to LUL, any works, apparatus and equipment of the Underground companies connected with any such railway and any land, premises, arch, cellar or vault belonging to or used by the Underground companies for the purposes of any such railway, works, apparatus or equipment;

“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;

“subsidiary” has the same meaning as in section 736 of the Companies Act 1985⁽²⁾;

“the Underground companies” means LUL, any subsidiary of LUL, a PPP company, any subsidiary of a PPP company and any PPP-related third party; and

(1) 1999 c. 29.

(2) 1985 c. 6.

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“the Underground companies' works and 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 the Underground companies 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.

17.—(1) DLRL shall not exercise the powers conferred by article 18 above or the powers conferred by section 11(3) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of LUL.

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

(3) The provisions of Schedule 10 to this Order shall not apply to any railway property to which this Part of this Schedule applies.

(4) Except with the consent of LUL, DLRL shall not under the powers of Part III of this Order—

- (a) acquire or enter upon,
- (b) take or use, whether temporarily or permanently,
- (c) acquire any new right over, or
- (d) acquire any existing right of the Underground companies relating to,

any railway property.

(5) Where LUL is asked to give its consent pursuant to sub-paragraph (1), (2), (3) or (4) above, such consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

18.—(1) DLRL shall before commencing construction of any specified work supply to LUL proper and sufficient plans of that work for the reasonable approval of the engineer and shall not commence such construction of the specified work until plans of that work have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) above shall not be unreasonably withheld, and if by the end of the period of 56 days beginning with the date on which such plans have been supplied to LUL the engineer has not intimated his disapproval of those plans and the grounds of his disapproval he shall be deemed to have approved the plans as submitted.

(3) When signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his reasonable opinion should be carried out before the commencement of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of any railway belonging to LUL or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work), and such protective works as may be reasonably necessary for those purposes shall be constructed by LUL or by DLRL, if LUL so desires, with all reasonable dispatch and DLRL shall not commence the construction of the specified works until the engineer has notified DLRL that the protective works have been completed to his reasonable satisfaction.

(4) The engineer shall inspect the protective works and notify DLRL that they have been completed to his reasonable satisfaction, or otherwise, as soon as reasonably practicable after they have been completed.

19.—(1) Any specified work and any protective work specified pursuant to paragraph 18(3) above shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled under paragraph 18 above;

- (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 belonging to LUL or the traffic thereon and the use by passengers of railway property,

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

(2) Nothing in this paragraph shall impose any liability on DLRL with respect to any damage, cost, expense or loss attributable to the negligence of the Underground companies or their servants, contractors or agents and any liability of DLRL under this paragraph shall be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the negligence of the Underground companies or their servants, contractors or agents.

20. DLRL shall—

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

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

22.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of a specified work, or during a period of 12 months after the commencement of regular revenue-earning train operations using the new railways comprised in any specified work, in consequence of the construction of a specified work, and LUL gives to DLRL reasonable notice of its intention to carry out any such alterations or additions specifying the alterations or additions to be carried out, DLRL shall pay to LUL the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by the Underground companies in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) The engineer shall, in respect of the capitalised sums referred to in this paragraph and paragraph 23(a) below, provide such details of the formula by which those sums have been calculated as DLRL may reasonably require.

(3) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving shall be set off against any sum payable by DLRL to LUL under this paragraph.

23. DLRL shall repay to LUL all reasonable fees, costs, charges and expenses reasonably incurred by the Underground companies—

- (a) in constructing any protective works under the provisions of paragraph 18(3) above 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 employment or procurement of the services of any inspectors, supervisory staff, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, monitoring, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work and to ensure the continued safe and economic operation of LUL's railway undertaking or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by a specified work) and the comfort and safety of passengers;
- (c) in respect of any special traffic working resulting from any speed restrictions which may, in the reasonable opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work, or from the substitution or diversion of services which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of railway property in the vicinity of a specified work, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work; and
- (e) in respect of the approval by the engineer of plans submitted by DLRL and the supervision by him of the construction of a specified work.

24.—(1) This paragraph shall apply to EMI only to the extent that such EMI is not attributable to any change to the Underground companies' apparatus carried out after approval of plans under paragraph 18(1) above for the relevant part of the authorised works giving rise to EMI (unless DLRL has been given notice in writing before the approval of those plans of the intention to make such change).

(2) Subject to sub-paragraph (4) below, DLRL shall in the design and construction of the authorised works take all measures necessary to prevent EMI and shall establish with LUL (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(3) In order to facilitate DLRL's compliance with sub-paragraph (2) above—

- (a) DLRL shall consult with LUL as early as reasonably practicable to identify all the Underground companies' works and apparatus which may be at risk of EMI, and thereafter shall continue to consult with LUL (both before and after formal submission of plans under paragraph 18(1) above) to identify all potential causes of EMI and the measures required to eliminate them;
- (b) the Underground companies shall make available to DLRL all information in their possession reasonably requested by DLRL in respect of the Underground companies' works and apparatus identified pursuant to paragraph (a) above; and
- (c) the Underground companies shall allow DLRL reasonable facilities for the inspection of the Underground companies' works and apparatus identified pursuant to paragraph (a) above.

(4) In any case where it is established that EMI can only reasonably be prevented by modifications to the Underground companies' works and apparatus, the Underground companies shall not withhold their consent unreasonably to modifications of the Underground companies' works and apparatus, but the means of prevention and the method of their execution shall be selected in LUL's reasonable discretion and in relation to such modifications paragraph 18(1) above shall have effect subject to this sub-paragraph.

(5) If at any time prior to the commencement of regular revenue-earning train operations on the new railways comprised in the authorised works and notwithstanding any measures adopted pursuant to sub-paragraph (2) above, the testing or commissioning of the authorised works causes EMI then DLRL shall immediately upon receipt of notification by LUL of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably

practicable after it has been issued) forthwith cease to use (or procure the cessation of use of) DLRL'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 (4) above) to the Underground companies' works and apparatus.

(6) In the event of EMI having occurred—

- (a) DLRL shall afford reasonable facilities to the Underground companies for access to DLRL's apparatus in the investigation of such EMI;
- (b) the Underground companies shall afford reasonable facilities to DLRL for access to the Underground companies' works and apparatus in the investigation of such EMI; and
- (c) the Underground companies shall make available to DLRL any additional material information in their possession reasonably requested by DLRL in respect of the Underground companies' works and apparatus or such EMI.

(7) Where the Underground companies approve modifications to the Underground companies' works and apparatus pursuant to sub-paragraphs (4) or (5) above—

- (a) the Underground companies shall allow DLRL reasonable facilities for the inspection of the relevant part of the Underground companies' works and apparatus;
- (b) any modifications to the Underground companies' works and apparatus approved pursuant to those sub-paragraphs shall be carried out and completed by DLRL in accordance with paragraph 19 above.

(8) To the extent that it would not otherwise do so, the indemnity in paragraph 26(1) below shall apply to the costs and expenses reasonably incurred or losses suffered by the Underground companies 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 the Underground companies' works and apparatus) or in consequence of any EMI to which sub-paragraph (5) above applies.

(9) For the purpose of paragraph 23(a) above any modifications to the Underground companies' works and apparatus under this paragraph shall be deemed to be protective works referred to in that paragraph.

(10) In relation to any dispute arising under this paragraph the reference in article 48 above to the Institution of Civil Engineers shall be read as a reference to the Institution of Electrical Engineers.

25. If at any time after the completion of a specified work, not being a work vested in the Underground companies, LUL gives notice to DLRL informing it that the state of maintenance of the specified work appears to be such as adversely affects the operation of railway property, DLRL shall, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect railway property.

26.—(1) DLRL shall pay to LUL all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by the Underground companies—

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

and DLRL shall indemnify the Underground companies 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 the Underground companies on behalf of DLRL or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of the

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Underground companies or of any person in their employ or of their contractors or agents) excuse DLRL from any liability under the provisions of this sub-paragraph.

(2) The Underground companies shall give DLRL reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of DLRL.

(3) Any liability of DLRL under this paragraph shall be reduced proportionately to the extent to which any cost, charge, damage, expense, claim, demand or loss is attributable to the negligence of the Underground companies or their servants, contractors or agents.

27. In the assessment of any sums payable to the Underground companies under this Part of this Schedule there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by the Underground companies 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 DLRL under this Part of this Schedule or increasing the sums so payable.

28. DLRL and the Underground companies may enter into, and carry into effect, agreements for the transfer to DLRL 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 the Underground companies relating to any railway property.