

# SCHEDULES

## SCHEDULE 6

Article 36

### PROTECTIVE PROVISIONS

#### PART I

#### GENERAL

##### *Application of Schedule 6*

1. The provisions of this Schedule shall have effect for the protection of each of the bodies referred to in Parts II to VII unless, in the case of any such body, it is otherwise agreed in writing between the Council and the body concerned.

##### *Arbitration*

2. Any difference arising between the Council and any body referred to in this Schedule (other than a difference as to the meaning or construction of this Schedule) shall be referred to and settled by arbitration in accordance with article 44.

#### PART II

### PROTECTION FOR RAILTRACK PLC

##### *Interpretation*

1. 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 Railtrack PLC for the purpose in question;

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

“Railtrack” means Railtrack PLC and any associated company of Railtrack PLC 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 736 of the Companies Act 1985(1)) the holding company of Railtrack PLC, a subsidiary of Railtrack PLC or another subsidiary of the holding company of Railtrack PLC;

“railway property” means any railway belonging to Railtrack PLC and any works, apparatus and equipment belonging to Railtrack connected with any such railway and includes any land

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(1) 1985 c. 6.

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held or used by Railtrack 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.

#### *Powers requiring consent of Railtrack PLC*

2.—(1) The Council shall not under the powers conferred by this Order acquire or use, or acquire new rights over, any railway property unless such acquisition or use is with the consent of Railtrack PLC.

(2) The Council shall not exercise the powers conferred by article 13 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 Railtrack PLC.

(3) The Council 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 Railtrack PLC.

(4) The Council shall not exercise the powers conferred by section 271 or 272 of the Town and Country Planning Act 1990, as applied by Schedule 5 to this Order, in relation to any right of access of Railtrack to railway property, but such right of access may be diverted with the consent of Railtrack PLC.

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

#### *Fencing*

3. Where so required by the engineer the Council shall to the reasonable satisfaction of the engineer fence off any specified work or take such other steps as the engineer may require to be taken for the purpose of separating that work from railway property, whether on a temporary or permanent basis or both.

#### *Approval of plans*

4.—(1) The Council shall before commencing construction of any specified work supply to Railtrack PLC 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) shall not be unreasonably withheld or delayed, and if within 56 days after such plans have been supplied to Railtrack PLC 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) If within 56 days after such plans have been supplied to Railtrack PLC, Railtrack PLC gives notice to the Council that Railtrack PLC desires itself to construct any part of the specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Railtrack PLC then, if the Council desires such part of the specified work to be constructed, Railtrack PLC shall construct it (together with any adjoining part of the specified work which the Council reasonably requires to be constructed in one operation with those works) with all reasonable dispatch on behalf of and to the reasonable satisfaction of the

Council in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (where appropriate and if given) of the Council.

(4) Upon signifying his approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in his opinion should be carried out before the commencement of a specified work to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Railtrack PLC 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 Railtrack PLC or by the Council, if Railtrack PLC so desires, with all reasonable dispatch and the Council shall not commence the construction of the specified work until the engineer has notified the Council that the protective works have been completed to his reasonable satisfaction.

- (a) (5) (a) For the avoidance of doubt, and subject to sub-paragraph (b), the protective works which the engineer may specify upon signifying his approval of plans of such of the specified works as are within 15 metres of, or may in any way adversely affect, the existing Ballast Sidings at Chester North Junction belonging to Railtrack may include works for the relocation of those sidings on land made available to the Council by Railtrack.
- (b) The Council shall not be obliged to relocate the sidings referred to in sub-paragraph (a) unless the land required for the purpose has been made available by Railtrack.
- (c) The work required to relocate the sidings shall be carried out by the Council as agent for Railtrack, and Railtrack shall own the relocated sidings when constructed.

#### *Construction of specified works*

5.—(1) Any specified work (together with any protective works specified by the engineer pursuant to paragraph 4(4)) shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved or deemed to have been approved or settled as aforesaid;
- (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 Railtrack PLC or the traffic thereon;

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, the Council shall, notwithstanding any such approval, make good such damage and shall pay to Railtrack PLC all reasonable expenses to which Railtrack 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 the Council with respect to any damage, costs, expenses or loss attributable to the negligence of Railtrack or its servants, contractors or agents.

#### *Access*

6. The Council 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.

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

*Alterations, etc. to railway property*

8.—(1) If during the construction of a specified work or during a period of 12 months after the completion of that work any alterations or additions, either permanent or temporary, to railway property are reasonably necessary in consequence of the construction of a specified work in order to ensure the safety of railway property or the continued safe and efficient operation of the railways of Railtrack PLC, and Railtrack PLC gives to the Council reasonable notice of its intention to carry out such alterations or additions (which shall be specified in the notice), the Council shall pay to Railtrack PLC the reasonable cost of those alterations or additions including, in respect of any such alterations or additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Railtrack 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 9(a), provide such details of the formula by which those sums have been calculated as the Council 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 the Council to Railtrack PLC under this paragraph.

*Repayment of Railtrack's fees etc.*

9. The Council shall repay to Railtrack PLC all reasonable fees, costs, charges and expenses reasonably incurred by Railtrack—

- (a) in constructing any part of a specified work on behalf of the Council as provided by paragraph 4(3) or in constructing any protective works under the provisions of paragraph 4(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works; and
- (b) in respect of the approval by the engineer of plans submitted by the Council and the supervision by him of the construction of a specified work and any protective works.

*Maintenance of specified works*

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

*Illuminated signs etc.*

11. The Council shall not provide any illumination or illuminated sign on or in connection with a specified work in the vicinity of any railway belonging to Railtrack PLC unless it shall have first consulted Railtrack PLC and it shall comply with Railtrack PLC's reasonable requirements for preventing confusion between such illumination or illuminated sign and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

*Alterations, etc. to railway property : repayment of additional expenses*

**12.** Any additional expenses which Railtrack may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work shall, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the Council, be repaid by the Council to Railtrack PLC.

*Indemnity*

**13.—(1)** The Council shall be responsible for and make good to Railtrack PLC 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 Railtrack—

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

and the Council shall indemnify Railtrack from and against all claims and demands arising out of or in connection with any specified work or any such failure, act or omission as aforesaid; and the fact that any act or thing may have been done by Railtrack on behalf of the Council or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of Railtrack or of any person in its employ or of its contractors or agents) excuse the Council from any liability under the provisions of this paragraph.

(2) Railtrack PLC shall give the Council reasonable notice of any such claim or demand as aforesaid and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Council.

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

(4) Subject to the terms of any agreement between Railtrack PLC and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Railtrack PLC shall promptly pay to each train operator the amount of any sums which Railtrack PLC receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Railtrack PLC the relevant costs shall, in the event of default, be enforceable directly by the train operator concerned to the extent that such sums would be payable to that operator pursuant to sub-paragraph (4).

(6) In this paragraph—

“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 Railtrack’s rail network as a result of the construction, maintenance or failure of any specified work or any such act or omission as mentioned in sub-paragraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

**14.** In the assessment of any sums payable 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 Railtrack if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Council under this part of this Schedule or increasing the sums so payable.

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15. The Council and Railtrack PLC may enter into, and carry into effect, agreements for the transfer to the Council of—

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

## PART III

### PROTECTION FOR ELECTRICITY AND GAS UNDERTAKERS

#### *Interpretation*

1.—(1) In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(2)) belonging to or maintained by that undertaker; and
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a public gas transporter for the purposes of the conveyance of gas;

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus; but the provisions of paragraphs 3 to 11 do not apply to apparatus in respect of which the relations between the Council and the undertakers are regulated by the provisions of Part III of the 1991 Act;

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

“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 or upon land;

“plans” includes sections and method statements; and

“undertaker” means any of the following, namely, a public electricity supplier within the meaning of Part I of the Electricity Act 1989 and a public gas transporter within the meaning of Part I of the Gas Act 1986(3); and, in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

(2) The provisions of Schedule 5 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

#### *Temporarily stopped up streets etc. : maintenance of apparatus*

2. Notwithstanding the temporary stopping up or diversion of any highway pursuant to article 9, an undertaker shall be at liberty at all times to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain or use any apparatus which at the time of the stopping up or diversion was in that highway.

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(2) 1989 c. 29.

(3) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45).

### *Acquisition of apparatus*

3. Notwithstanding anything in this Order or shown on the land plans the Council shall not acquire any apparatus otherwise than by agreement.

### *Removal of apparatus : alternative apparatus*

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

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

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

(4) The obligation imposed by sub-paragraph (3) shall not extend to the exercise by the undertaker of any power to acquire compulsorily any land or rights in land.

(5) Any alternative apparatus to be constructed in land of the Council under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Council or in default of agreement settled by arbitration pursuant to article 44.

(6) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to the undertaker of any facilities and rights as are referred to in sub-paragraph (2) or (3), proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Council to be removed under the provisions of this Part of this Schedule.

(7) Notwithstanding anything in sub-paragraph (6), if the Council gives notice in writing to the undertaker in question that it desires itself to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of the Council, that work may, with the prior written consent of the undertaker (which shall not be unreasonably withheld and shall be subject to any such conditions as are reasonable and proper to protect the apparatus), in lieu of being executed by the undertaker, be executed by the Council with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(8) Nothing in sub-paragraph (7) shall authorise the Council to execute the actual placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute

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any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Council affords to an undertaker facilities and rights for the construction and maintenance in land of the Council of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Council and the undertaker in question or in default of agreement settled by arbitration in accordance with article 44.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any authorised guided busway of the Council or adjacent to any other of the authorised works, the arbitrator shall—

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

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

#### *Protection of apparatus*

6.—(1) Not less than 56 days before commencing the execution of any works of the type referred to in paragraph 4(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the Council under paragraph 4(2), the Council shall submit to the undertaker in question a plan, section and description of the works to be executed.

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

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

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

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



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

*Stopped up highways : access to apparatus*

7. Where, by reason of this Order, any part of any highway in which any apparatus is situated ceases to be part of a highway an undertaker may exercise the same rights of access to such apparatus as is enjoyed immediately before the coming into force of this Order, but nothing in this paragraph shall affect any right of the Council or of the undertaker to require removal of such apparatus under this Part of this Schedule or the power of the Council to execute works in accordance with paragraph 6.

*Repayment of undertakers' expenses*

8.—(1) Subject to the following provisions of this paragraph, the Council shall repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 4(2).

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

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

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Council or, in default of agreement, is not determined by arbitration 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) shall 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 shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

*Indemnity*

9.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works as are referred to in paragraph 4(2) any damage is caused to any apparatus (other

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than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the Council shall—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) indemnify the undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made against, or recovered from, or incurred by it,

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

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

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

#### *Payment for redundant apparatus*

**10.**—(1) Where, by reason of the stopping up of any highway pursuant to this Order, any apparatus belonging to an undertaker and laid or placed in such highway or elsewhere is rendered derelict or unnecessary, the Council shall, subject to sub-paragraph (2), pay to that undertaker the value of such apparatus (which shall then become the property of the Council) and the reasonable cost of and any costs incidental to the cutting off of such apparatus from any other apparatus, and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason of such apparatus being so rendered derelict or unnecessary.

(2) The Council shall not under the provisions of this paragraph be required to pay to an undertaker the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the undertaker, other apparatus has at the expense of the Council been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary.

#### *Existing enactments and agreements*

**11.** Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the Council and an undertaker in respect of any apparatus laid or erected in land belonging to the Council on the coming into force of this Order.

## PART IV

### PROTECTION FOR SEWERAGE UNDERTAKERS

#### *Interpretation*

**1.**—(1) In this Part of this Schedule—

“construction” includes placing, alteration and reconstruction; and “construct” and “constructed” shall be construed accordingly;

“plans” includes sections, specifications and method statements;

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“sewer” means a public sewer within the meaning of the Water Industry Act 1991(4), and includes a disposal main within the meaning of that Act and any manholes, ventilating shafts, pumps or accessories forming part of any such sewer; but the provisions of paragraphs 4 to 9 do not apply to any sewer in respect of which relations between the Council and the undertaker are regulated by the provisions of Part III of the 1991 Act;

“specified work” means so much of any of the authorised works as is situated over, or within 15 metres of, or (wherever situated) imposes any load directly upon, any sewer; and

“the undertaker” means the sewerage undertaker for the area within which the authorised works are situated or whose sewers are affected by those works.

(2) The provisions of Schedule 5 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

#### *Temporarily stopped up streets etc.: maintenance of sewers*

2. Notwithstanding the temporary stopping up or diversion of any highway pursuant to article 9, the undertaker shall be at liberty at all times to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain, protect or use any sewer which at the time of the stopping up or diversion was in that highway.

#### *Acquisition of sewers*

3. Notwithstanding anything in this Order or shown on the deposited plans the Council shall not acquire any sewer otherwise than by agreement.

#### *Protection of sewers*

4.—(1) Before commencing the construction or renewal of any specified work, and in the case of any temporary work its removal, the Council shall submit to the undertaker plans for those works as described in sub-paragraph (2) and shall not commence that work until the undertaker has signified in writing its approval of those plans.

(2) The plans to be submitted to the undertaker shall be detailed plans describing the position and manner in which, and the level at which, any specified work is proposed to be constructed and the position of all sewers of the undertaker within 15 metres of that work or upon which the specified work will impose a load, and shall include detailed drawings of every alteration which the Council may propose to any such sewers.

(3) For the purpose of the preparation of the plans, and subject to such reasonable requirements as it may specify, the undertaker shall permit the Council to have access to plans in its possession and to any of its sewers.

(4) Any approval of the undertaker required under this paragraph—

(a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5),

(b) shall not be unreasonably withheld, and

(c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

(5) The undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing the sewerage system of the undertaker against interference or risk of damage or providing or securing proper and convenient means of access to any sewer.

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(4) 1991 c. 56.

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5.—(1) The specified work shall be constructed or, in the case of any temporary work removed, in accordance with the plans approved, or deemed to have been approved, or settled by arbitration, as the same may be amended from time to time by agreement between the Council and the undertaker; and in the construction or removal of the specified work the Council shall comply with all reasonable requirements of the undertaker and shall provide new, altered or substituted sewers or works for the protection of any sewers of the undertaker, in such manner as the undertaker may reasonably require, by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such sewer by reason of any specified work.

(2) All works under sub-paragraph (1), for the provision of new, altered or substituted sewers or the protection of any sewers of the undertaker shall, where so required by the undertaker, be constructed by the undertaker or under the supervision (if given) of an officer of the undertaker duly appointed for the purpose, and all costs, charges and expenses reasonably incurred by the undertaker in the construction of such works, or in the preparation or examination of plans or designs of such works, or in such supervision, shall be paid to the undertaker by the Council.

(3) When works for the provision of any such new, altered or substituted sewer, or any such protective work forming part of any such new, altered or substituted sewer or any existing sewer of the undertaker, have been completed under this Part of this Schedule to the reasonable satisfaction of the undertaker, they shall be vested in and shall become maintainable by the undertaker.

6. As soon as reasonably practicable after the completion of the construction of the specified works, the Council shall deliver to the undertaker a plan and section showing the position and level of those works as constructed and all new, altered or substituted works provided under this Part of this Schedule.

#### *Repayment of undertaker's expenses*

7. Subject to the following provisions of this paragraph, the Council shall be liable to make good, or, if the undertaker so decides, to repay to the undertaker any expense reasonably incurred by the undertaker in making good, all injury or damage to any sewers, drains or works vested in the undertaker (except in so far as such sewer, drain or work is intended for alteration or removal for the purposes of the specified work) caused by or resulting from the construction of any specified work or any investigation undertaken in relation to any specified work and the provision of any new, altered or substituted sewer or any protective work under this Part of this Schedule and shall pay to the undertaker any additional expense to which it may be put in the maintenance, management or renewal of any new, altered or substituted sewer which may be necessary in consequence of the construction of any specified work.

#### *Indemnity*

8.—(1) The Council shall indemnify the undertaker against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the undertaker which the undertaker may incur or have to pay or which it may sustain in consequence of the construction of any specified work or of the failure or want of repair of any specified work or any subsidence caused by the construction of any specified work or in consequence of any act or omission of the Council, its contractors, agents, workmen or servants, whilst engaged upon the specified work and any new, altered or substituted sewer or any protective work.

(2) The undertaker shall give to the Council reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement in writing of the Council.

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

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

and the placing of a sewer of that type or capacity or of those dimensions or the placing of a sewer at that depth, as the case may be, is not agreed by the Council or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the sewer 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 by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3) an extension of a sewer to a length greater than the length of an existing sewer shall not be treated as a placing of a sewer of greater dimensions than those of the existing sewer.

(5) An amount which apart from this sub-paragraph would be payable to the undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant, to sub-paragraph (3)) shall, if the works involve the placing of a sewer provided in substitution for a sewer 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 sewer in the ordinary course, be reduced by the amount which represents that benefit.

9. Nothing in paragraph 7 or 8 shall impose any liability on the Council in respect of any damage to the extent that it is attributable to the act, neglect or default of the undertaker, its officers, servants, or, if not the Council, its contractors or agents.

## PART V

### PROTECTION FOR TRAIN OPERATORS

#### *Interpretation*

1. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction;

“railway property” has the same meaning as in Part II of this Schedule;

“relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by a train operator as a consequence of any restriction of the use of Railtrack’s railway network as a result of—

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

“specified work” means, as respects any train operator, 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 comprising track and related facilities which that operator has permission to use for the purpose of the operation of trains; and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

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### *Indemnity*

2.—(1) The Council shall be responsible for and make good to any train operator all relevant costs which may be occasioned to or reasonably incurred by that train operator.

(2) The train operator shall give the Council reasonable notice of any claim or demand relating to relevant costs and no settlement or compromise of such a claim or demand shall be made without the prior consent of the Council, which shall not be unreasonably withheld.

3. In the assessment of any sums payable 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 a train operator if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the Council under paragraph 2(1) or increasing the sums so payable.

## PART VI

### PROTECTION FOR THE ENVIRONMENT AGENCY

#### *Interpretation*

1. In this Part of this Schedule—

“the Agency” means the Environment Agency; and

“plans” includes sections, drawings, specifications, calculations and descriptions.

#### *Application of Water Resources Act 1991 and Land Drainage Act 1991*

2. Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991 or any byelaws made under that Act or the Land Drainage Act 1991(5) in relation to anything done under or in pursuance of this Order.

#### *Obstructions in rivers and watercourses: approval of plans*

3. Before carrying out any works under the powers of this Order involving the erection or raising of any obstruction to the flow of any watercourse which is not part of a main river within the meaning of section 113 of the Water Resources Act 1991 or the construction, alteration or replacement of any culvert or any structure designed to contain or divert the flow of any such watercourse in, under or through any land held for the purposes of or in connection with the authorised works, the Council shall furnish to the Agency proper and sufficient plans of such works for the approval of the Agency and shall not carry out such works until those plans have been approved in writing by the Agency.

4. The approval of plans furnished under paragraph 3 shall not be unreasonably withheld and if, within 56 days from the day that the plans are received by the Agency, the Agency does not indicate in writing its disapproval and the grounds of its disapproval, it shall be deemed to have approved the plans as received.

#### *Maintenance of structures in watercourses*

5. Any culvert or any structure designed to contain or divert the flow of any watercourse situated within any land held for the purposes of or in connection with the authorised works, whether

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(5) 1991 c. 59.

constructed under the powers of this Order or in existence prior to the making of this Order, shall be maintained by the Council in good repair and condition and free from obstruction.

6. Nothing in paragraph 5 shall have the effect of requiring the Council to carry out works of maintenance in respect of any culvert or structure which the Agency or any other person is liable to maintain.

#### *Remedying contraventions*

7. If any obstruction is erected or raised or any culvert is constructed, altered or replaced in contravention of paragraph 2 or 3, or if the Council fails to maintain any culvert or structure as required by paragraph 5, the Council shall, upon receiving notice from the Agency, take such action as may be necessary to remedy the effect of the contravention to the Agency's satisfaction and in default the Agency may itself take such action as may be necessary and recover the expenses reasonably incurred by it in doing so from the Council as a debt due from the Council to the Agency.

## PART VII

### PROTECTION FOR RAILWAY PATHS LIMITED AND SUSTRANS

#### *Application of protocol*

1. In this Part of this Schedule "the protocol" means the protocol dated 26th September 1997 agreed between the Council, Flintshire County Council, Chester City Council and Sustrans for the construction of a guided busway/cycleway/footway on the alignment of the disused Mickle Trafford to Shotton railway line.

2. The Council, Railway Paths Limited and Sustrans shall enter into and implement such agreements as are required to give effect to the objects of the protocol, including agreements providing—

- (a) for the transfer by Railway Paths Limited to the Council of so much of the Land in the City of Chester and the parish of Hoole comprising the corridor formerly used for the disused Mickle Trafford to Shotton Railway and shown on the land plans as plot no. 47 in the parish of Hoole and plot nos. 15, 17, 17A, 20A, 22 to 26, 31, 33 to 38, 38A, 39 to 42, 43, 43A, 44, 44A, 45, 46, and 54 to 58, in the City of Chester;
- (b) for the management by Sustrans of the cycleway and footway which has been or is to be constructed by the Council on land within the corridor referred to in sub-paragraph (a) and which is not so required; and
- (c) for transitional arrangements between the parties during the construction and commissioning of the guided busway.

#### *Acquisition of land*

3. The Council shall not under the powers of this Order acquire from Railway Paths Limited or Sustrans any part of, or any right in, the land specified in paragraph 2(a) except in accordance with the provisions of the above mentioned protocol and agreements, but nothing in this paragraph shall prevent the exercise of such powers against any other person or in respect of that land or rights in it.