

## SCHEDULES

### SCHEDULE 7

Section 45.

#### PROTECTIVE PROVISIONS

##### PART I

##### HIGHWAYS AND TRAFFIC

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the appropriate authority and the highway authority concerned, have effect for the protection of the highway authorities referred to in this Part.
- (2) In this Part of this Schedule—
  - "appropriate authority" does not include the Secretary of State or the County Council;
  - "highway" means a highway maintainable by the highway authority;
  - "highway authority" means—
    - (a) in the case of a trunk road, the Secretary of State; and
    - (b) in the case of other highways, the local highway authority.
- 2 Wherever in this Part of this Schedule provision is made with respect to the approval or consent of the highway authority, that approval or consent shall be in writing and subject to such reasonable terms and conditions as the highway authority may require, but shall not be unreasonably withheld.
- 3 Before carrying out any work for the construction or maintenance of any part of the works authorised by this Act which will involve interference with a highway, or the traffic in any highway, or before temporarily stopping up any highway, the appropriate authority shall consult the highway authority—
  - (a) as to the time when the work shall be commenced, and as to the extent of the surface of the highway which it may be reasonably necessary for the appropriate authority to occupy, or the nature of the interference which may be caused to traffic in the carrying out of the work, or as to the time during which, and the extent to which, the highway shall be stopped up (as the case may be); and
  - (b) as to the conditions under which the work shall be carried out or the highway shall be stopped up (as the case may be);so as to reduce so far as possible inconvenience to the public and to ensure the safety of the public.
- 4 (1) Any such work involving interference with a highway shall not be carried out, the surface of the highway shall not be occupied, the highway shall not be stopped up by the appropriate authority and the interference with traffic shall not be caused except at such time, to such extent and in accordance with such conditions as may be submitted to and approved by the highway authority.

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- (2) If, within 28 days after the submission to them of proposals for compliance with this paragraph, the highway authority have not approved them or disapproved them, they shall be deemed to have approved the proposals as submitted.
- 5       The highway authority may require that the works authorised by this Act, so far as they involve any serious interference with the movement of traffic in any highway, shall be carried on, so far as reasonably practicable, continuously day and night and the appropriate authority shall take all such steps as may be reasonably necessary to reduce so far as possible the period of such interference.
- 6       It shall not be lawful for the appropriate authority in exercise of their powers under this Act to place any hoardings on any part of any highway except for such period and in such manner as shall be reasonably necessary.
- 7       (1) The appropriate authority shall not, without the consent of the highway authority, make a junction between any road and a highway or an intended highway except in accordance with plans, sections and specifications submitted to and approved by the highway authority and if, within 28 days after such plans, sections and specifications have been submitted, the highway authority have not approved or disapproved them, they shall be deemed to have approved the plans, sections and specifications as submitted.
- (2) For the purposes of this paragraph the plans, sections and specifications of a junction with a highway or intended highway shall include plans, sections and specifications of all works within the highway or (as the case may be) intended highway which are required for the purposes of or in connection with the junction.
- 8       The appropriate authority shall not, without the consent of the highway authority, construct any part of the works authorised by this Act under and within 8 metres of the surface of any highway except in accordance with plans and sections submitted to, and approved by, the highway authority and if within 28 days after such plans and sections have been submitted the highway authority have not approved or disapproved them, they shall be deemed to have approved the plans and sections as submitted.
- 9       In the construction of any part of the said works under a highway no part thereof shall, except with the consent of the highway authority, be so constructed as to interfere with the provision of proper means of drainage of the surface of the highway or be nearer than two metres to the surface of the highway.
- 10      (1) The provisions of this paragraph have effect in relation to, and to the construction of, any new bridge, or any extension or alteration of an existing bridge, carrying any part of the works authorised by this Act over a highway or carrying a highway over any part of those works, and any such new bridge, or (as the case may be) any bridge so extended or altered, is in this paragraph referred to as "the bridge".
- (2) Before commencing the construction of, or the carrying out of any work in connection with, the bridge which involves interference with a highway, the appropriate authority shall submit to the highway authority for their approval plans, sections, drawings and particulars (below in this paragraph referred to as "plans") relating thereto, and the bridge shall not be constructed and the works shall not be carried out except in accordance with the plans submitted to, and approved by the highway authority.

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- (3) If within 28 days after the plans have been submitted the highway authority have not approved or disapproved them, they shall be deemed to have approved the plans as submitted.
  - (4) Any part of the construction of the bridge or any part of any work as aforesaid which involves interference with a highway shall be carried out under the supervision (if given) and to the reasonable satisfaction of the highway authority.
  - (5) In constructing the bridge, or in carrying out any work in connection therewith which involves interference with any highway, the appropriate authority shall, in such manner and at such time as the highway authority may reasonably require, make good all damage caused to the highway by reason or in consequence of the construction of the bridge or the carrying out of the work.
  - (6) If the bridge carries any part of the works authorised by this Act over any highway—
    - (a) it shall be constructed in such manner as to prevent so far as may be reasonably practicable the dripping of water from the bridge; and
    - (b) the highway authority may, at the cost of the appropriate authority, provide and place such lamps and apparatus as may from time to time be reasonably necessary for efficiently lighting any highway under or in the vicinity of the bridge.
- 11 The appropriate authority shall secure that so much of the works authorised by this Act as is constructed under any highway shall be so designed, constructed and maintained as to carry the appropriate loading recommended for highway bridges by the Secretary of State at the time of construction of the works, and the appropriate authority shall indemnify the highway authority against, and make good to the highway authority, the expenses which the highway authority may reasonably incur in the maintenance or repair of any highway, or any tunnels, sewers, drains or apparatus therein, by reason of non-compliance with the provisions of this paragraph.
- 12 It shall be lawful for an officer of the highway authority duly appointed for the purpose, at all reasonable times, on giving to the appropriate authority such notice as may in the circumstances be reasonable, to enter upon and inspect any part of the works authorised by this Act which is in or over any highway, or which may affect any highway or any property of the highway authority, during the carrying out of the work, and the appropriate authority shall give to such engineer or surveyor or officer all reasonable facilities for such inspection and, if he shall be of opinion that the construction of the work is attended with danger to any highway or to any property of the highway authority on or under any highway, the appropriate authority shall adopt such measures and precautions as may be reasonably necessary for the purpose of preventing any damage or injury thereto.
- 13 The appropriate authority shall not alter, disturb or in any way interfere with any property of the highway authority on or under any highway, or the access thereto, without the consent of the highway authority, and any alteration, diversion, replacement or reconstruction of any such property which may be necessary shall be made by the highway authority or the appropriate authority as the highway authority think fit, and the expense reasonably incurred by the highway authority in so doing shall be repaid to the highway authority by the appropriate authority.
- 14 The appropriate authority shall not remove any soil or material from any highway except so much as must be excavated in the carrying out of the works authorised by this Act.

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- 15 If the highway authority, after giving to the appropriate authority not less than 28 days' notice (or, in case of emergency, such notice as is reasonably practicable) of their intention to do so, incur any additional expense in the signposting of traffic diversions or the taking of other measures in relation thereto, or in the repair of any highway by reason of the diversion thereto of traffic from a road of a higher standard, in consequence of the construction of the works authorised by this Act, the appropriate authority shall repay to the highway authority the amount of any such expense reasonably so incurred.
- 16 (1) The appropriate authority shall not, except with the consent of the highway authority, deposit any soil or materials, or stand any vehicle or plant, on or over any highway so as to obstruct or render less safe the use of the highway by any person, or, except with the like consent, deposit any soil or materials on any highway outside a hoarding, and, unless the consent of the highway authority is given within 28 days after request therefor, it shall be deemed to have been refused.
- (2) The expense reasonably incurred by the highway authority in removing any soil or materials deposited on any highway in contravention of this paragraph shall be repaid to the highway authority by the appropriate authority.
- 17 The appropriate authority shall, if reasonably so required by the highway authority, provide and maintain to the reasonable satisfaction of the highway authority, during such time as the appropriate authority may occupy any part of a highway for the purpose of the construction of any part of the works authorised by this Act, temporary bridges and temporary ramps for vehicular or pedestrian traffic over any part of the works or in such other position as may be necessary to prevent undue interference with the flow of traffic in the highway.
- 18 (1) Where any part of any highway shall have been broken up or disturbed by the appropriate authority and not permanently stopped up or diverted they shall make good the subsoil, foundations and surface of that part of the highway to the reasonable satisfaction of the highway authority, and shall maintain the same to the reasonable satisfaction of the highway authority for such time as may be reasonably required for the permanent reinstatement of the highway.
- (2) The reinstatement of that part of the highway shall in the first instance be of a temporary nature only and the permanent reinstatement thereof shall be carried out by the highway authority so soon as reasonably practicable after the completion of the temporary reinstatement, and the expense reasonably incurred by the highway authority in so doing shall be repaid to the highway authority by the appropriate authority.
- 19 The appropriate authority shall make compensation to the highway authority for any subsidence of, or damage to, any highway or any property of the highway authority on or under any highway which may be caused by, or in consequence of, any act or default of the appropriate authority, their contractors, servants or agents, whether such damage or subsidence shall happen during the construction of the works authorised by this Act or at any time thereafter.
- 20 The fact that any act or thing may have been done in accordance with plans approved by the highway authority or under their supervision shall not (if it was not attributable to the act, neglect or default of the highway authority or of any person in their employ or their contractors or agents) exonerate the appropriate authority from any liability, or affect any claim for damages, under this Part of this Schedule or otherwise.

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- 21 (1) Except as provided in sub-paragraph (2) below, any difference arising between the appropriate authority and the highway authority under this Part of this Schedule shall be determined by the Secretary of State or, at his option, by arbitration.
- (2) Where the Secretary of State is the highway authority concerned any such difference shall be determined by arbitration.

## PART II

### PROTECTION OF THE RAILWAYS BOARD

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the appropriate authority and the Railways Board, have effect for the protection of that board.
- (2) In this Part of this Schedule—
- "appropriate authority" does not include the Railways Board;
  - "railway property" means any railway of the Railways Board, and any works connected therewith for the maintenance or operation of which the Railways Board are responsible, and includes any land held or used by the Railways Board for the purposes of any such railway or works;
  - "the specified works" means so much of any of the works authorised by this Act (other than the A20 improvement works) as may be situated upon, across, under or over, or within 15 metres of, railway property or may in any way affect railway property;
  - "construction" includes reconstruction and for the purposes of paragraphs 8, 11 and 12 below includes maintenance and repair of the specified works;
  - "plans" includes sections, drawings, particulars and schedules of construction.
- 2 The appropriate authority shall not under the powers conferred by section 8 of this Act acquire compulsorily any railway property but may create and acquire such easements and rights as may reasonably be required for the purposes specified in that section in any such property delineated on the deposited plans.
- 3 (1) The appropriate authority shall, before commencing the construction of the specified works, supply to the Railways Board such proper and sufficient plans thereof as may reasonably be required and shall not commence the specified works until plans thereof have been approved in writing by the engineer of the Railways Board or settled by arbitration.
- (2) If within 28 days after such plans have been supplied to the Railways Board their engineer shall not have notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted.
- 4 If within 28 days after such plans have been supplied to the Railways Board the Railways Board give notice to the appropriate authority that the Railways Board desire themselves to construct any part of the specified works forming part of Work No. 1 which, in the opinion of the engineer of the Railways Board, will or may affect the stability of railway property then, if the appropriate authority desire such part of the specified works to be constructed, the Railways Board shall construct it with all reasonable dispatch on behalf of, and to the reasonable satisfaction of, the appropriate authority in accordance with the plans approved or deemed

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- to be approved or settled as aforesaid and under the supervision (if given) of the appropriate authority.
- 5 Upon signifying his approval or disapproval of the plans the engineer of the Railways Board may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the construction of the specified works to ensure the safety and stability of railway property; and such protective works as may be reasonably necessary for those purposes shall be constructed by the Railways Board with all reasonable dispatch, and the appropriate authority shall not commence the construction of the specified works until the Railways Board shall have notified the appropriate authority that the protective works have been completed.
- 6 The appropriate authority shall give to the engineer of the Railways Board not less than 28 days' notice of their intention to commence the construction of any of the specified works and, except in emergency (when they shall give such notice as may be reasonably practicable), of their intention to carry out any works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with railway property.
- 7 (1) The construction of the specified works shall, when commenced, be carried out with all reasonable dispatch in accordance with the plans approved or deemed to be approved or settled as aforesaid and under the supervision (if given), and to the reasonable satisfaction, of the engineer of the Railways Board, and in such manner as to cause as little damage to railway property as may be and as little interference as may be with the conduct of traffic on the railways of the Railways Board.
- (2) If any damage to railway property or any such interference shall be caused by the carrying out of the specified works, the appropriate authority shall, notwithstanding any such approval as aforesaid, make good such damage and pay to the Railways Board reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage or interference.
- (3) Nothing in this paragraph shall impose any liability on the appropriate authority with respect to any damage, costs, expenses or loss attributable to the act, neglect or default of the Railways Board or their servants, contractors or agents.
- 8 The appropriate authority shall at all times afford reasonable facilities to the engineer of the Railways Board for access to the specified works during their construction and shall supply to him all such information as he may reasonably require with regard to the specified works or the method of construction thereof.
- 9 The Railways Board shall at all times afford reasonable facilities to the appropriate authority and their agents for access to any works carried out by the Railways Board under this Part of this Schedule during their construction, and shall supply to the appropriate authority such information as they may reasonably require with regard to such works or the method of construction thereof.
- 10 (1) If any alteration or addition, whether permanent or temporary, to railway property shall be reasonably necessary during the construction of the specified works, or during a period of twelve months after their completion in consequence of their construction, such alterations and additions may be carried out by the Railways Board.
- (2) If the Railways Board give to the appropriate authority reasonable notice of their intention to carry out such alterations or additions, the appropriate authority shall pay to the Railways Board the reasonable cost thereof including, in respect of

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permanent alterations and additions, a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by the Railways Board in maintaining, working and, when necessary, renewing any such alterations or additions.

- (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 appropriate authority to the Railways Board under this Part of this Schedule.

11 The appropriate authority shall repay to the Railways Board costs reasonably incurred by the Railways Board—

- (a) in constructing any part of the specified works on behalf of the appropriate authority as provided by paragraph 4 above or in constructing any protective works under paragraph 5 above including, in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably incurred by the Railways Board in maintaining and renewing such works;
- (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching and lighting railway property and signalling railway traffic and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction of the specified works;
- (c) in respect of any special traffic working upon any existing railways of the Railways Board resulting from any speed restrictions, or any substitution or diversion of services, which may, in the opinion of the Railways Board, be required by reason or in consequence of the construction of the specified works;
- (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 in consequence of the construction of the specified works;
- (e) in respect of the supervision by the engineer of the Railways Board of the construction of the specified works.

12 (1) Subject to sub-paragraph (2) below, the appropriate authority shall be responsible for, and make good to the Railways Board, 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 Railways Board—

- (a) by reason of the construction of the specified works; or
- (b) by reason of any act or omission of the appropriate authority, or of any person in their employ, or of their contractors or others whilst engaged upon the construction of the specified works;

and the appropriate authority shall indemnify the Railways Board from and against claims and demands arising out of, or in connection with, the construction of the specified works or any such act or omission.

- (2) The fact that any act or thing may have been done in accordance with plans approved by the engineer of the Railways Board, or in accordance with any requirement made by him, or under his supervision, shall not (if it was not attributable to the act, neglect or default of the Railways Board, or of any person in their employ, or of their contractors or agents) excuse the appropriate authority from any liability under this Part of this Schedule.

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- (3) The Railways Board shall give to the appropriate authority reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the appropriate authority.
- 13      Any difference arising between the appropriate authority and the Railways Board under this Part of this Schedule shall be determined by arbitration.

### PART III

#### PROTECTION OF NAVIGATION

- 1      (1) The following provisions of this Part of this Schedule shall have effect in relation to tidal works for the protection of navigation.
- (2) In this Part of this Schedule—
- "tidal work" means so much of the works authorised by this Act as is on the surface of lands below the level of mean high water springs;
- "the Trinity House" has the meaning given in section 742 of the Merchant Shipping Act 1894.
- 2      (1) A tidal work shall not be constructed, extended, enlarged, altered, renewed, replaced or reconstructed except in accordance with plans and sections approved by the Secretary of State and subject to any conditions and restrictions imposed by the Secretary of State before the work is begun.
- (2) The Secretary of State's primary concern in exercising his powers under subparagraph (1) above shall be to prevent danger to navigation; but he shall have regard, in exercising those powers in relation to such part of the sea wall as is a tidal work, to—
- (a) any factors that have been or may be taken into account by the county planning authority in deciding under paragraph 3 of Schedule 3 to this Act whether to approve plans and specifications of the sea wall;
- (b) any decision of that authority with respect to the approval of any such plans and specifications; and
- (c) any conditions imposed on the grant of any such approval;
- with a view to securing that his exercise of those powers is consistent so far as practicable with any decision that has been or may be made by that authority under that paragraph.
- (3) In case of contravention of this paragraph or of any condition or restriction imposed under this paragraph—
- (a) the Secretary of State may by notice in writing require the Concessionaires, at their own expense, to remove the tidal work or any part thereof and restore the site thereof to its former condition; and if, on the expiration of 30 days from the date when the notice is served upon the Concessionaires, they have failed to comply with the requirements of the notice the Secretary of State may execute the works specified in the notice; or
- (b) if it appears to the Secretary of State urgently necessary to do so, he may himself remove the tidal work or part of it and restore the site to its former condition;
- and any expenditure incurred by the Secretary of State in so doing shall be recoverable from the Concessionaires.



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- 3           The Secretary of State may at any time if he deems it expedient order a survey and examination of a tidal work, or of the site upon which it is proposed to construct the work, and any expenditure incurred by the Secretary of State in any such survey and examination shall be recoverable from the Concessionaires.
- 4           (1) The Concessionaires shall, at or near a tidal work, during the whole time of the construction, extension, enlargement, alteration, renewal, replacement or reconstruction thereof, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Secretary of State shall from time to time direct.
- (2) If the Concessionaires fail to comply in any respect with a direction given under this paragraph they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.
- 5           (1) After the completion of a tidal work the Concessionaires shall, at the outer extremity thereof, exhibit every night from sunset to sunrise such lights, if any, and take such other steps for the prevention of danger to navigation as the Trinity House shall from time to time direct.
- (2) If the Concessionaires fail to comply in any respect with a direction given under this paragraph they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.
- 6           (1) Where a tidal work is abandoned, or suffered to fall into decay, the Secretary of State may by notice in writing require the Concessionaires at their own expense either to repair and restore the work, or any part thereof, or to remove the work and restore the site thereof to its former condition, to such an extent and within such limits as the Secretary of State may think proper.
- (2) Where part of a work is situated on or over land above the level of mean high water springs and that part is in such condition as to interfere, or to cause reasonable apprehension that it may interfere, with the right of navigation or other public rights over the foreshore, the Secretary of State may include that part of the work, or any portion thereof, in any notice under this paragraph.
- (3) If on the expiration of 30 days from the date on which a notice under this paragraph is served upon the Concessionaires they have failed to comply with the requirements of the notice, the Secretary of State may execute the works specified in the notice and any expenditure incurred by him in so doing shall be recoverable from the Concessionaires.
- 7           (1) In case of injury to or destruction or decay of a tidal work, or any part thereof, the Concessionaires shall forthwith notify the Trinity House and shall lay down such buoys, exhibit such lights and take such other steps for preventing danger to navigation as the Trinity House shall from time to time direct.
- (2) If the Concessionaires fail to notify the Trinity House as required by this paragraph or to comply in any respect with a direction given under this paragraph, they shall be liable on summary conviction to a fine not exceeding the statutory maximum and on conviction on indictment to a fine.
- 8           (1) In proceedings for an offence under paragraph 4, 5 or 7 above it shall be a defence for the Concessionaires to prove that they took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

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- (2) If in any case the defence provided by sub-paragraph (1) above involves the allegation that the commission of the offence was due to the act or default of another person, the Concessionaires shall not, without leave of the court, be entitled to rely on that defence unless, within a period of seven days before the hearing, they have served on the prosecutor a notice in writing giving such information identifying or assisting in the identification of that other person as was then in their possession.

## PART IV

### PROTECTION OF DOVER HARBOUR BOARD

- 1       The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Concessionaires and the Dover Harbour Board (in this Part referred to as "the Harbour Board"), have effect for the protection of the Harbour Board.
- 2       In this Part of this Schedule—
- "plans" includes sections, drawings and specifications;
- "the Harbour Board's shore" means that part of the shore above mean low water springs which is vested in the Harbour Board;
- "the protected beach" means that part of the Harbour Board's shore which lies within 100 metres westward of the Admiralty Pier;
- "the specified works" means Work No. 7 and any other works authorised by this Act which are on the surface of lands below the level of mean high water springs and within one international nautical mile from the seaward limits of Dover Harbour.
- 3       The Concessionaires shall consult the Harbour Board as to the methods and timetable for the construction of any of the specified works or the carrying out of operations relating thereto so as to avoid so far as practicable any interference with navigation in Dover Harbour or in the approaches thereto and any damage to the Harbour Board's shore or to any works forming part of the Harbour Board's undertaking.
- 4       (1) Before commencing to construct any of the specified works the Concessionaires shall submit to the Harbour Board for their reasonable approval proper and sufficient plans of that work and such work shall not be constructed otherwise than in accordance with such plans as may be reasonably approved in writing by the principal engineer of the Harbour Board and subject to such conditions as he may reasonably require so as to avoid so far as practicable any interference with navigation in Dover Harbour or in the approaches thereto and any damage to the works forming part of the Harbour Board's undertaking, or in accordance with such plans and subject to such conditions as may be determined under paragraph 10 below.
- (2) In the event of the principal engineer of the Harbour Board failing to express his disapproval of any plans within one month after such plans have been delivered to the Harbour Board in pursuance of this paragraph, he shall be deemed to have approved the plans as submitted.
- 5       (1) If there shall be any inconsistency between the plans of any tidal work approved under paragraph 4 above and the plans approved by the Secretary of State under paragraph 2 of Part III of this Schedule, or between any conditions required under paragraph 4 above and any conditions or restrictions imposed by the Secretary of

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State under the said paragraph 2, the inconsistency shall be referred to the Secretary of State by the Concessionaires after not less than 14 days' notice to the Harbour Board, and the work shall be constructed in accordance with the plans, and subject to the conditions and restrictions, then determined by the Secretary of State.

(2) A determination by the Secretary of State under sub-paragraph (1) above shall be made in accordance with the said paragraph 2 and shall have effect as if it were an approval of plans and sections, subject to conditions and restrictions (if any) imposed, under that paragraph.

6 The Concessionaires shall compensate the Harbour Board for any damage to any work forming part of the Harbour Board's undertaking or to Dover Harbour or its approaches caused by or arising in consequence of the construction or maintenance of any of the specified works or of the failure or want of repair thereof or in consequence of any act or omission of the Concessionaires, their contractors, agents, workmen or servants whilst engaged upon a specified work and shall indemnify the Harbour Board from all claims, demands or expenses which may be made on or against them or which they may have to pay by reason or in consequence of any such damage:

Provided that the Harbour Board shall give to the Concessionaires reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement of the Concessionaires.

7 If at any time any damage or diminution shall occur to the protected beach and such damage or diminution shall be caused wholly or substantially by the construction of the specified works, the Concessionaires shall make good or cause to be made good such damage or diminution to the reasonable satisfaction of the principal engineer of the Harbour Board.

8 The fact that any act or thing may have been done in accordance with plans approved by the principal engineer of the Harbour Board, or in accordance with a requirement made by him, or under his supervision, shall not (if it was not attributable to the act, neglect or default of the Harbour Board, or of any person in their employ, or of their contractors or agents) excuse the Concessionaires from any liability under this Part of this Schedule.

9 Except in connection with the arrangements for the deposit of spoil approved under paragraph 5 of Schedule 3 to this Act and without prejudice to any other obligations and liabilities of the Concessionaires under this Part of this Schedule, the Concessionaires shall not deposit spoil anywhere below the level of mean high water springs within one international nautical mile of the seaward limits of Dover Harbour.

10 Any difference arising between the Concessionaires and the Harbour Board under this Part of this Schedule shall be determined by the Secretary of State or, at his option, by an arbitrator to be appointed by him, and the costs of final determination shall be in the discretion of the Secretary of State or of the arbitrator, as the case may be.

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## PART V

### PROTECTION OF SEWERS

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the appropriate authority and the sewerage authority concerned, have effect for the protection of the sewerage authorities.
- (2) In this Part of this Schedule—
- "appropriate authority" does not include the Secretary of State in respect of the A20 improvement works;
- "sewer" includes any main used for the conveyance of sewage sludge or sewage effluent and any pipe, subway or storm overflow or other apparatus vested in, or maintained by, the sewerage authority for the purposes of sewerage or sewage disposal, but does not include any such apparatus in respect of which the relations between the appropriate authority and the sewerage authority are regulated by the provisions of Part II of the Public Utilities Street Works Act 1950;
- "the sewerage authority" means the Southern Water Authority and the Thames Water Authority, or either of them, in their capacity as authorities responsible for sewerage and sewage disposal, and includes a local authority as a relevant authority for the purposes of section 15 of the Water Act 1973;
- "specified work" means so much of any of the works authorised by this Act (other than the A20 improvement works) as may be situated over, or within 15 metres measured in any direction of, or impose any load directly upon, any sewer.
- 2 (1) Before commencing the construction or renewal of any specified work the appropriate authority shall submit to the sewerage authority plans thereof as described in paragraph 3 below (in this Part of this Schedule referred to as "the said plans") and shall not commence that work until the sewerage authority have signified their approval of the said plans.
- (2) The sewerage authority's approval shall not be unreasonably withheld and, if within 56 days after the submission of the said plans the sewerage authority have not approved or disapproved them, they shall be deemed to have approved them.
- 3 (1) The plans to be submitted to the sewerage authority shall be detailed plans, drawings, sections and specifications describing the position and manner in which, and the level at which, any specified work is proposed to be carried out and the position of all sewers of the sewerage authority within the limits of deviation for that work, and shall comprise detailed drawings of every alteration which the appropriate authority propose to make in any such sewers.
- (2) For the purpose of the preparation of the said plans the sewerage authority shall, on application by the appropriate authority, permit them to have access to plans in the possession of the sewerage authority and to any of their sewers.
- 4 The appropriate authority shall give to the sewerage authority not less than 28 days' notice of their intention to commence the construction or renewal of a specified work and, except in case of emergency (when they shall give such notice as may be reasonably practicable), of their intention to carry out works of repair or maintenance of a specified work.
- 5 In carrying out any specified work the appropriate authority shall comply with all reasonable requirements of the sewerage authority of which due notice is given to

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- the appropriate authority and shall provide new, altered or substituted sewers, or works for the protection of any sewers of the sewerage authority, in such manner as the sewerage authority shall reasonably require for the protection of, and for preventing injury or impediment to, any such sewer by reason of the specified work.
- 6 All works for the provision of new, altered or substituted sewers or protective works in pursuance of paragraph 5 above shall, where so required by the sewerage authority, be carried out by or under the supervision (if given) of an officer of the sewerage authority duly appointed for the purpose, and all reasonable costs, charges and expenses to which the sewerage authority may be put by reason of such works, whether in the course of the carrying out of the works, or in the preparation or examination of plans or designs or in such supervision as aforesaid, or otherwise, shall be paid to the sewerage authority by the appropriate authority.
- 7 Nothing in paragraphs 5 and 6 above shall require the appropriate authority to provide new or substituted works of better type, of greater dimensions or of greater capacity than those of the works in place of which they are provided except in so far as the placing of works of such type, dimensions or capacity has been specified as necessary in a specification of Works settled under paragraph 2 above.
- 8 When works for the provision of any such new, altered or substituted sewers or protective works have been completed in accordance with paragraph 5 above they shall be maintainable by the sewerage authority.
- 9 The sewerage authority may require such modifications to be made in the said plans as may be reasonably necessary to secure their sewerage system against interference or risk of damage and to provide convenient means of access to their sewers.
- 10 (1) Subject to sub-paragraphs (2) and (3) below, if by reason or in consequence of the construction or failure of any of the works authorised by this Act, or any subsidence resulting from any of those works, any damage to any sewer (other than a sewer intended for removal for the purposes of those works) of the sewerage authority shall be caused, the appropriate authority shall pay the cost reasonably incurred by the sewerage authority in making good such damage and shall—
- (a) make reasonable compensation to the sewerage authority for loss sustained by them; and
  - (b) indemnify the sewerage authority against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from or incurred by, the sewerage authority;
- by reason or in consequence of any such damage.
- (2) Nothing in sub-paragraph (1) above shall impose any liability on the appropriate authority with respect to any damage to the extent that it is attributable to the act, neglect or default of the sewerage authority, their officers, servants, contractors or agents.
- (3) The sewerage authority shall give to the appropriate authority reasonable notice of any claim or demand as aforesaid and no settlement or compromise shall be made without the prior consent of the appropriate authority.
- 11 If, in the carrying out of any specified work, or any work for the provision of new, altered or substituted sewers or protective works in pursuance of paragraph 5 above, the appropriate authority damage or, without the consent of the sewerage authority, alter or in any way interfere with any of their existing sewers the appropriate authority shall—

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- (a) pay to the sewerage authority any additional expense to which they 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 the specified work; and
  - (b) subject to paragraph 13 below, give to the sewerage authority uninterrupted access to any such new, altered or substituted sewer and such facilities as may be reasonably required for the inspection, maintenance, alteration and repair thereof.
- 12 An officer of the sewerage authority duly appointed for the purpose may, subject to paragraph 13 below, enter upon and inspect any specified work or any other works constructed under this Part of this Schedule.
- 13 Access to any sewer under paragraph 11(b) above or entry upon any specified work under paragraph 12 above shall be subject to supervision and control by the appropriate authority but shall be afforded by the appropriate authority as soon as possible and at any reasonable time at which it is required.
- 14 The approval by the sewerage authority of any plans, drawings, sections or specifications or the supervision by them of any work under this Part of this Schedule shall not exonerate the appropriate authority from any liability or affect any claim for damages by the sewerage authority.
- 15 As soon as reasonably practicable after the completion of the carrying out of a specified work, the appropriate authority shall deliver to the sewerage authority a plan and section showing the position and level of that work as constructed and all new, altered or substituted works provided in pursuance of paragraph 5 above.
- 16 Any difference arising between the appropriate authority and the sewerage authority under this Part of this Schedule shall be determined by arbitration.

## PART VI

### PROTECTION OF CERTAIN STATUTORY UNDERTAKERS

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the appropriate authority and the undertakers concerned, have effect for the protection of the undertakers.
- (2) In this Part of this Schedule—
- "appropriate authority" does not include the Secretary of State in respect of the A20 improvement works;
  - "the undertakers" means any person authorised to carry on an undertaking for the supply of electricity, gas or water within any area within which land is to be acquired or works are to be constructed under this Act and—
    - (a) in relation to water undertakers, includes a water authority in their capacity as an authority authorised to carry on an undertaking for the supply of water within their area; and
    - (b) in relation to any apparatus, means the undertakers to whom the apparatus belongs or by whom the apparatus is maintained;
  - "apparatus" means—
    - (a) in the case of electricity undertakers, electric lines and works (as respectively defined in the Electric Lighting Act 1882) belonging to, or maintained by, those undertakers; or

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(b) in the case of gas or water undertakers, mains, pipes or other apparatus belonging to, or maintained by, those undertakers for the purposes of gas or water supply;

(not being in any case apparatus in respect of which the relations between the appropriate authority and the undertakers are regulated by the provisions of Part II of the Public Utilities Street Works Act 1950), and includes any structure for the lodging therein of apparatus;

"alternative apparatus" means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;

"in" in a context referring to apparatus includes under, over, across, along or upon.

2 Notwithstanding anything in this Act or shown on the deposited plans, the appropriate authority shall not acquire any apparatus under section 8 of this Act otherwise than by agreement.

3 If the appropriate authority in the exercise of the powers conferred by this Act acquire any interest in or temporarily occupy any lands in which any apparatus is placed, that apparatus shall not be removed under this Part of this Schedule, and any right of the undertakers to maintain, repair, renew or inspect that apparatus in those lands shall not be extinguished, until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers.

4 If—

(a) the appropriate authority, for the purpose of carrying out any work authorised by this Act in, on or under any land, require the removal of any apparatus placed in that land, and give to the undertakers not less than 56 days' written notice of that requirement, together with a plan and section of the proposed work, and of the proposed position of the alternative apparatus to be provided or constructed; or

(b) in consequence of the exercise of any of the powers conferred by this Act, the undertakers reasonably require to remove any apparatus;

the appropriate authority shall afford to the undertakers the necessary facilities and rights for the construction of any necessary alternative apparatus in other land held by the appropriate authority, or in which the appropriate authority have sufficient rights or interests, and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

Provided that, if the alternative apparatus or any part thereof is to be constructed elsewhere than in other land held by the appropriate authority and the appropriate authority are unable to afford such facilities and rights as aforesaid, the undertakers shall, on receipt of a written notice to that effect from the appropriate authority, forthwith use their best endeavours to obtain the necessary facilities and rights.

5 Any alternative apparatus to be constructed in land held by the appropriate authority in pursuance of paragraph 4 above shall be constructed in such manner, and in such line or situation, as may be agreed between the undertakers and the appropriate authority or, in default of agreement, determined by arbitration.

6 The undertakers shall, after the manner of construction and the line and situation of any necessary alternative apparatus have been agreed or determined as aforesaid, and after the grant to the undertakers of any such facilities and rights as are referred to in paragraph 4 above, proceed with all reasonable dispatch to construct and bring

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- into operation the alternative apparatus and thereafter to remove any apparatus required by the appropriate authority to be removed under the provisions of this Part of this Schedule and, in default, the appropriate authority may remove the apparatus.
- 7 (1) Notwithstanding anything in paragraphs 5 and 6 above, if the appropriate authority give notice in Writing to the undertakers that they desire themselves to carry out 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 be situate in any lands held by the appropriate authority, such work, instead of being carried out by the undertakers, shall be carried out by the appropriate authority with all reasonable dispatch under the superintendence (if given) and to the reasonable satisfaction of the undertakers.
- (2) Nothing in this paragraph shall authorise the appropriate authority to carry out the placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or to carry out any filling around the apparatus extending (where the apparatus is laid in a trench) within 300 millimetres above the apparatus.
- 8 (1) Where, in accordance with the provisions of this Part of this Schedule, the appropriate authority afford to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection on land held by the appropriate authority of alternative apparatus, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the appropriate authority and the undertakers or, in default of agreement, determined by arbitration.
- (2) In determining such terms and conditions as aforesaid in respect of alternative apparatus to be constructed across or along any works authorised by this Act the arbitrator shall—
- (a) give effect to all reasonable requirements of the appropriate authority for ensuring the safety and efficient operation of those 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 the appropriate authority or the use of the same; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the case, give effect to the terms and conditions (if any) applicable to the apparatus for which the alternative apparatus is to be substituted.
- (3) If the facilities and rights to be afforded by the appropriate authority 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, more or less favourable on the whole to the undertakers than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbitrator shall make such provision for the payment of compensation to or by the appropriate authority by or to the undertakers in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the case.
- 9 (1) Not less than 56 days before commencing to carry out any work authorised by this Act which is near to, or will or may affect, any apparatus the removal of which has not been required by the appropriate authority under paragraph 4 above, the appropriate authority shall submit to the undertakers a plan, section and description of the work to be carried out
- (2) The work shall be carried out in accordance with the plan, section and description submitted as aforesaid and in accordance with such reasonable requirements as may



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be made by the undertakers for the alteration or otherwise for the protection of the apparatus, or for securing access thereto, and the undertakers shall be entitled by their officer to watch and inspect the carrying out of the work.

- (3) If the undertakers, within 28 days after the submission to them of any such plan, section and description, shall, in consequence of the work proposed by the appropriate authority, reasonably require the removal of any apparatus and give written notice to the appropriate authority of that requirement, the foregoing provisions of this Part of this Schedule shall have effect as if the removal of such apparatus had been required by the appropriate authority under paragraph 4 above.
  - (4) Nothing in sub-paragraphs (1) to (3) above shall preclude the appropriate authority from submitting at any time, or from time to time, but in no case less than 28 days before commencing to carry out the work, a new plan, section and description thereof instead of the plan, section and description previously submitted, and thereupon the provisions of those sub-paragraphs shall apply to, and in respect of, that new plan, section and description.
  - (5) The appropriate authority shall not be required to comply with sub-paragraphs (1) to (3) above in a case of emergency but in such a case they shall give notice to the undertakers so soon as reasonably practicable and a plan, section and description of the works so soon as reasonably practicable thereafter, and shall otherwise comply with those sub-paragraphs so far as reasonably practicable in the circumstances.
- 10 If in consequence of the exercise of the powers of this Act the access to any apparatus is materially obstructed the appropriate authority shall, so far as reasonably practicable, provide alternative means of access to such apparatus.
- 11 Where, in consequence of this Act, any part of any highway in which any apparatus is situate ceases to be part of a highway, the undertakers may exercise the same rights of access to such apparatus as they enjoyed immediately before the passing of this Act, but nothing in this paragraph shall prejudice or affect any right of the appropriate authority or of the undertakers to require removal of that apparatus under this Part of this Schedule or the power of the appropriate authority to carry out works in accordance with paragraph 9 above.
- 12 (1) Subject to sub-paragraph (2) below, the appropriate authority shall repay to the undertakers the reasonable expenses incurred by the undertakers in, or in connection with—
- (a) the removal and relaying or replacing, alteration or protection of any apparatus or the provision and construction of any new apparatus under any of the provisions of this Part of this Schedule;
  - (b) the cutting off of any apparatus from any other apparatus; and
  - (c) any other work or thing rendered reasonably necessary in consequence of the exercise by the appropriate authority of any of the powers of this Act.
- (2) Section 23(3) and (4) of the Public Utilities Street Works Act 1950 (limitations on undertakers' right to payments) shall, so far as applicable, apply to any payment to be made by the appropriate authority under sub-paragraph (1) above as if the works or operations mentioned in that sub-paragraph were such undertakers' works as are referred to in the said subsection (3), and as if in that subsection for the words "specified as so necessary in a specification of the works settled under Part I of the Fourth Schedule to this Act or agreed so to be by the promoting authority" there were substituted the words "agreed or determined by arbitration under Part VI of Schedule 7 to the Channel Tunnel Act 1987".

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- 13 (1) Subject to sub-paragraphs (2) and (3) below, if by reason or in consequence of the construction of any of the works authorised by this Act, or any subsidence resulting from any of those works, any damage 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 the undertakers, or any interruption in the supply of electricity, gas or water (as the case may be) by the undertakers or, in the case of the Central Electricity Generating Board, by or to that board, shall be caused, the appropriate authority shall bear and pay the cost reasonably incurred by the undertakers in making good such damage or restoring the supply and shall—
- (a) make reasonable compensation to the undertakers for loss sustained by them; and
  - (b) indemnify the undertakers against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, the undertakers;
- by reason or in consequence of any such damage or interruption.
- (2) Nothing in sub-paragraph (1) above shall impose any liability on the appropriate authority with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of the undertakers, their officers, servants, contractors or agents.
- (3) The undertakers shall give to the appropriate authority reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the appropriate authority.
- 14 The appropriate authority shall, so far as is reasonably practicable, so exercise their powers under paragraph 15 of Schedule 2 above as not to obstruct or render less convenient the access to any apparatus.
- 15 Notwithstanding the temporary stopping up or diversion of any highway under paragraph 22 of Schedule 2 above, the undertakers 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 to enable them to inspect, repair, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in that highway.
- 16 Nothing in this Part of this Schedule shall prejudice or affect the provisions of any enactment or agreement regulating the relations between the appropriate authority and the undertakers in respect of any apparatus in land held by the appropriate authority at the commencement of this Act.
- 17 (1) Any difference arising between the appropriate authority and the undertakers under this Part of this Schedule shall be determined by arbitration.
- (2) In determining any such difference the arbitrator may, if he thinks fit, require the appropriate authority to carry out any temporary or other works so as to avoid, so far as may be reasonably possible, interference with the use of any apparatus.

## PART VII

### PROTECTION OF LAND DRAINAGE

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the appropriate authority and the drainage authority concerned, have effect for the further protection of the drainage authority.

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- (2) In this Part of this Schedule—
- "appropriate authority" does not include the Secretary of State in respect of the A20 improvement works;
- "drainage authority" means the Southern Water Authority or, within the area of the River Stour (Kent) Internal Drainage Board, that board except in relation to a drainage work forming part of a main river as defined in the Land Drainage Act 1976;
- "drainage work" means any watercourse as defined in that Act and any structure or appliance under the control of the drainage authority constructed or used for defence against water (including sea water);
- "plans" includes sections, drawings and specifications;
- "specified work" means so much of any work authorised by this Act as will affect any drainage work in the drainage authority's area or the flow of water in, to or from any such drainage work.
- 2 (1) Not less than 56 days before beginning to construct any specified work, the appropriate authority shall submit to the drainage authority plans of the work and the work shall not be constructed except in accordance with plans approved by the drainage authority or settled by arbitration and in accordance with any reasonable requirements made by the drainage authority for the protection of any drainage work and for the prevention of flooding.
- (2) The requirements which the drainage authority may make under sub-paragraph (1) above include conditions requiring the construction of such protective works by, and at the expense of, the appropriate authority during the construction of the specified work as are reasonably necessary to safeguard a drainage work against damage or to secure that the efficiency of a drainage work for land drainage purposes is not impaired.
- (3) If within a period of 28 days after the submission of any plans under sub-paragraph (1) above the drainage authority do not inform the appropriate authority in writing that they disapprove of those plans, stating the grounds of their disapproval, they shall be treated for the purposes of this paragraph as having approved them.
- 3 Any specified work, and all protective works required by the drainage authority under paragraph 2 above, shall be constructed to the reasonable satisfaction of the drainage authority and the drainage authority shall be entitled by their officer to watch and inspect the construction of such works.
- 4 If by reason of the construction of any specified work the efficiency of any drainage work for land drainage purposes is impaired or that work is otherwise damaged, such damage shall be made good by the appropriate authority to the reasonable satisfaction of the drainage authority and, if the appropriate authority fail to do so, the drainage authority may make good the same and recover from the appropriate authority the expense reasonably incurred by them in so doing.
- 5 (1) The appropriate authority shall indemnify the drainage authority from all claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from or incurred by, the drainage authority by reason or in consequence of—
- (a) any damage to any drainage work so as to impair its efficiency for the purposes of land drainage; or
- (b) any raising of the water table in lands adjoining the works authorised by this Act or any sewers, drains or watercourses; or

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- (c) any flooding or increased flooding of any such lands;  
which may be caused by or result from the construction of any work authorised by this Act or any act or omission of the appropriate authority, their contractors, agents, workmen or servants whilst engaged upon the work.
- (2) The drainage authority shall give to the appropriate authority reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement of the appropriate authority.
- 6 The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the drainage authority or to their satisfaction or in accordance with any directions or award of an arbitrator shall not relieve the appropriate authority from any liability under the provisions of this Part of this Schedule.
- 7 Any difference arising between the appropriate authority and the drainage authority under this Part of this Schedule shall be determined by arbitration.

## PART VIII

### FURTHER PROTECTION OF SOUTHERN WATER AUTHORITY

- 1 The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Concessionaires and the Southern Water Authority (in this Part referred to as "the Authority"), have effect for the further protection of the Authority.
- 2 If within six months from the passing of this Act the Authority notify the Concessionaires that they have decided to proceed with the construction of a public sewer and other works for the improvement of drainage sufficient to provide for the disposal of surface water from the terminal area at Cheriton, Folkestone and that it is their intention to complete the works within the period of three years thereafter, the Concessionaires shall not, so long as the Authority proceed with the construction of those works in accordance with that intention, construct the drainage lagoon (Work No. 16) and, on the completion of those works, the powers of this Act for the construction of the lagoon shall cease to have effect.
- 3 Any right of the Concessionaires under section 34 of the Public Health Act 1936 to drain surface water from the terminal area to any public sewer other than the public sewer mentioned in paragraph 2 above shall not be exercisable except with the written consent of the drainage authority.
- 4 (1) Not less than 56 days before beginning to construct the drainage lagoon or other drainage works for the terminal area the Concessionaires shall submit to the Authority a description of the terminal area together with plans and full particulars of the drainage lagoon or such other drainage works or, as the case may be, both the lagoon and such other drainage works as they may propose for or in connection with the discharge of surface water.
- (2) The said works shall not be constructed except in accordance with a specification and plans approved by the Authority or settled by arbitration and in accordance with any reasonable requirements made by the Authority for the protection from pollution of any watercourse or underground strata.

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- (3) The requirements which the Authority may make under sub-paragraph (2) above include the construction of such works by and at the expense of the Concessionaires as are reasonably necessary for the interception, treatment and disposal of any poisonous, noxious or polluting matter contained in the run-off from the terminal area.
- (4) If within a period of 28 days after the submission of the specification and any plans under sub-paragraph (1) above the Authority do not inform the Concessionaires in writing that they disapprove of those plans, stating the grounds of their disapproval, they shall be treated for the purposes of this paragraph as having approved them.
- 5       The drainage lagoon and other works constructed by the Concessionaires for or in connection with the discharge of surface water from the terminal area shall be constructed, maintained and operated by the Concessionaires to the reasonable satisfaction of the Authority and the Authority shall be entitled by their officer to watch and inspect the same.
- 6       Not less than six months before commencing the construction of Works Nos. 3 and 4 and any underground ancillary works associated with those works, the Concessionaires shall, subject to any necessary consents, construct such number of observation boreholes in such positions and equipped with such monitoring equipment as the Authority may reasonably require for the purpose of monitoring the effect of any of those works on groundwater.
- 7       Except as otherwise agreed in writing by the Authority, the Concessionaires shall not construct buildings on, or raise the level of the surface of the ground within, so much of the site of the inland clearance depot as is within the area designated by the Authority as the 100 year flood plain of the river East Stour without providing equivalent compensatory flood storage capacity elsewhere.
- 8       Except as provided in paragraph 3 above, nothing in this Part of this Schedule shall prejudice or affect the provisions of any other enactment in their application to the Concessionaires and the Authority.
- 9       Any difference arising between the Concessionaires and the Authority under this Part of this Schedule shall be determined by arbitration.

## **PART IX**

### **FURTHER PROTECTION OF THE FOLKESTONE AND DISTRICT WATER COMPANY**

- 1       The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the Concessionaires and the Folkestone and District Water Company (in this Part referred to as "the Company"), have effect for the further protection of the Company.
- 2       Part VI of this Schedule shall have effect as if references therein to apparatus of the Company included the existing drain and telecommunication line serving the Company's house at Cherry Garden.
- 3       No part of the access road known as Waterworks Lane in the district of Shepway (town of Folkestone) shall be stopped up under paragraph 16 of Schedule 2 to this Act until Work No. 14 has been completed and is open for use by the Company.

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- 4 (1) Where the Concessionaires propose to construct, as part or for the purpose of Work No. 3 or 4, any underground work within a radius of three kilometres of any of the Company's existing sources of supply, they shall take steps—
- (a) to prevent or restrict the flow of water into that work from the stratum through which the work is to be constructed; and
  - (b) to prevent pollution of water in that stratum from the work;
- and, not less than three months before beginning to construct that work, shall submit to the Company a description of the work and of the steps which they propose to take for the purposes mentioned in paragraphs (a) and (b) above.
- (2) Any underground work mentioned in sub-paragraph (1) above shall not be constructed except in accordance with the descriptions submitted to, and either approved by the Company or settled by arbitration, and in accordance with any reasonable requirements made by the Company for the protection of the water which they are authorised to abstract from the source of supply in question or which has been so abstracted by them.
- (3) If within the period of two months from the submission of any description of an underground work under sub-paragraph (1) above the Company do not inform the Concessionaires in writing that they disapprove of the underground work stating the grounds of their disapproval they shall be treated for the purposes of this paragraph as having approved of it.
- (4) If it appears to the Company that—
- (a) by reason of the construction by the Concessionaires of an underground work (whether a work such as is mentioned in sub-paragraph (1) above or not) there has been or will be a material reduction in the yield of any of the Company's existing sources of supply; or
  - (b) by reason of anything done or omitted by the Concessionaires, their servants or agents in relation to an underground work, either in the course of constructing it or otherwise, the water in the stratum through which the work is being or has been constructed has or will become polluted;
- the Company may by notice in writing require the Concessionaires—
- (i) to take such measures as are specified in the notice for the purpose of preventing or mitigating the reduction in the yield of their sources or for preventing or abating the pollution (as the case may be); or
  - (ii) if no measures are capable of being required for this purpose, to cease the construction of the underground work for such time as is specified in the notice.
- (5) On the receipt of notice under sub-paragraph (4)(a) above the Concessionaires shall forthwith cease such construction for such period as may be agreed in writing between the Company and the Concessionaires or in default of agreement for such period as may be determined by arbitration.
- (6) On the receipt of notice under sub-paragraph (4)(b) above the Concessionaires shall take the measures therein specified subject only to such modifications (if any) as may be agreed in writing between the Company and the Concessionaires.
- (7) Paragraph 13 of Part VI of this Schedule shall apply to any pollution of or reduction in the yield of water from any of the Company's existing sources of supply which is within a radius of three kilometres from any underground work mentioned in sub-paragraph (1) above as it applies in relation to any damage to property of the

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Company, and any approval given in relation to that work under this paragraph shall not exonerate the Concessionaires from any liability to the Company under the said paragraph 13 as applied by this sub-paragraph.

- 5       The Company shall be entitled by their officers or agents to watch and inspect the carrying out of any work authorised by this Act which is within the limits within which the Company are for the time being authorised to supply water.
- 6       Any difference arising between the Concessionaires and the Company under this Part of this Schedule shall, except as otherwise provided in this Part of this Schedule, be determined by arbitration.

## PART X

### PROTECTION OF TELECOMMUNICATIONS OPERATORS

- 1       (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the appropriate authority and a telecommunications operator, have effect for the protection of that operator.
- (2) In this Part of this Schedule "telecommunications operator" means the operator of a telecommunications code system and "telecommunication apparatus", "telecommunications code system" and "telecommunication system" have the same meanings as in Schedule 4 to the Telecommunications Act 1984.
- 2       (1) Subject to sub-paragraph (2) below, any electrical works or equipment constructed, erected, laid, maintained, worked or used under this Act shall be so constructed, erected or laid and so maintained, worked and used, and Works Nos. 3,4 and 5 ("the railway") shall be so worked, that any electricity conveyed by, or used in, or in connection with, any such works or equipment, and the working of the railway, does not cause avoidable interference (whether by induction or otherwise) with any telecommunication apparatus kept installed for the purposes of a telecommunications code system or the service provided by such a system.
- (2) Sub-paragraph (1) above does not apply to any telecommunication apparatus kept or installed for the purposes of a telecommunication system and installed in any part of the railway.
- 3       (1) Where in pursuance of paragraph 16 of Schedule 2 to this Act the appropriate authority stop up and discontinue the whole or any part of any highway the following provisions of this paragraph shall have effect in relation to so much of any telecommunication apparatus as is in the land which by reason of the stopping up ceases to be a highway or part thereof (in this paragraph referred to as "the affected apparatus").
- (2) The rights of the telecommunications operator of the system for the purposes of which the apparatus is used to remove the affected apparatus shall be exercisable notwithstanding the stopping up, but those rights shall not be exercisable as respects the whole or any part of the affected apparatus after the expiration of a period of 28 days from the date of the service of the notice referred to in sub-paragraph (6) below unless, before the expiration of that period, the operator has given notice to the appropriate authority of its intention to remove the affected apparatus, or that part of it, as the case may be.
- (3) The operator of the system for the purposes of which the apparatus is used may, by notice in that behalf to the appropriate authority, abandon the affected apparatus, or

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any part of it, and shall be deemed, as respects the affected apparatus, or any part of it, to have abandoned it at the expiration of the said period of 28 days unless, before the expiration of that period, the operator has removed it or served notice of intention to remove it.

- (4) The operator of the system for the purposes of which the apparatus is used shall be entitled to recover from the appropriate authority the expense of providing, in substitution for the affected apparatus and any apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the affected apparatus, telecommunication apparatus in such other place as the operator may reasonably require.
  - (5) Where under sub-paragraph (3) above the operator of the system for the purposes of which the apparatus is used has abandoned the whole or any part of the affected apparatus, it shall vest in the appropriate authority and shall be deemed with its abandonment to cease to be kept installed for the purposes of a telecommunications code system.
  - (6) So soon as practicable after the whole or any part of a highway has been stopped up under paragraph 16 of Schedule 2 to this Act the appropriate authority shall serve notice of the stopping up on any telecommunications operator which has notified the appropriate authority of its interest in the highway.
- 4 The powers conferred by paragraph 15 of Schedule 2 to this Act shall, so far as reasonably practicable, be so exercised as not to obstruct or render less convenient the access to any telecommunication apparatus kept installed for the purposes of a telecommunications code system.
- 5 The exercise of the powers conferred by paragraph 22 of Schedule 2 to this Act in relation to a highway shall not affect the rights of the operator of any telecommunications code system, for the purposes of which the apparatus is used, to maintain, inspect, repair, renew or remove telecommunication apparatus in the highway or to open or break up that highway for any of those purposes.
- 6 (1) Subject to sub-paragraphs (2) and (3) below, if, by reason or in consequence of the construction of any of the works authorised by this Act or any subsidence resulting from any of those works, any damage to any telecommunication apparatus kept installed for the purposes of a telecommunications code system (other than apparatus the repair of which is not reasonably necessary in view of its intended removal), or any interruption in the service provided by that telecommunications system, shall be caused, the appropriate authority shall bear and pay the cost reasonably incurred by the telecommunications operator of that system in making good such damage or restoring that service and shall—
- (a) make reasonable compensation to the operator for loss sustained by it; and
  - (b) indemnify the operator against claims, demands, proceedings, costs, damages and expenses which may be made, or taken against, or recovered from, or incurred by, the operator;
- by reason or in consequence of any such damage or interruption.
- (2) Nothing in sub-paragraph (1) above shall impose any liability on the appropriate authority with respect to any damage or interruption affecting any telecommunications code system to the extent that such damage or interruption is attributable to the act, neglect or default of the operator of that system, its officers, servants, contractors or agents.



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*Status: This is the original version (as it was originally enacted).*

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- (3) The operator shall give to the appropriate authority reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the appropriate authority.
- 7 Any difference arising between the appropriate authority and any telecommunications operator under this Part of this Schedule shall be determined by arbitration.