

SCHEDULES

SCHEDULE 10

Article 28(2)

PROTECTION OF CERTAIN PERSONS

PART I

PROTECTION OF RAILTRACK

1.—(1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Railtrack PLC, have effect.

(2) In this Part of this Schedule—

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

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

“plans” shall include sections, designs, drawings, specifications, soil reports, calculations and 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 this purpose “associated company” means any company which is (within the meaning of section 763 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 of Railtrack connected with any such railway, and includes any land held or used by Railtrack for the purposes of such a railway or such works, apparatus or equipment;

“specified work” means so much of any of the authorised works as is situated upon, across, under or over or may in any way affect railway property and which has been notified as a specified work in accordance with paragraph 3(1) below; and

“Station” means Railtrack PLC’s Charing Cross Station in the City of Westminster.

2.—(1) The undertaker shall not under the powers conferred by or under 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 undertaker shall not in exercise of the powers under article 3(3) above carry out any works outside the limits of deviation which affect railway property unless the carrying out of such works is with the consent of Railtrack PLC.

(3) Subject to sub-paragraph (4) below, the powers under article 5 above to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the Highways Act 1980(2)), is under the control or management of, or is maintainable by, Railtrack, except with the consent of Railtrack PLC.

(1) 1985 c. 6.

(2) 1980 c. 66.

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(4) Sub-paragraph (3) above shall not apply to the carrying out under this Order of emergency works, within the meaning of Part III of the 1991 Act.

(5) The undertaker shall not in the exercise of the powers conferred by or under this Order prevent pedestrian or vehicular access to the Station or any other railway property unless preventing such access is with the consent of Railtrack PLC.

(6) The undertaker shall not exercise the powers under section 271 or 272 of the Town and Country Planning Act 1990(3), as applied by Schedule 11 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.

(7) The undertaker shall not exercise the powers under article 14(1) or 15 above or the powers under section 11(3) of the 1965 Act, in respect of any railway property except with the consent of Railtrack PLC.

(8) Where Railtrack PLC is asked to give its consent pursuant to sub-paragraphs (2), (3), (6) or (7) above such consent shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

3.—(1) The undertaker shall before commencing construction of any authorised work supply to Railtrack PLC proper and sufficient plans of that work and shall not commence construction of that work until—

- (a) the engineer has notified the undertaker in writing whether or not such work is a specified work; and
- (b) where the engineer notifies the undertaker that the work is a specified work, plans thereof have been approved in writing by the engineer (such approval not to be unreasonably withheld) or settled by mediation or arbitration in accordance with paragraph 15 below.

(2) The notification required by sub-paragraph (1)(a) above shall be given not more than 10 days after such plans have been supplied to Railtrack PLC.

(3) If by the end of the period of 28 days beginning with the date on which plans have been supplied to Railtrack PLC under sub-paragraph (1) above (or such shorter period as may be agreed between the undertaker and 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.

(4) When signifying his approval of the plans the engineer, may specify any protective works (whether temporary or permanent) which in his reasonable opinion should be carried out by the undertaker before commencement of the specified works to ensure the safety or stability of railway property, the continuation of safe and efficient operation of the railways of Railtrack PLC and the Station or the services of operators using the same (including any relocation of works, apparatus and equipment necessitated by the authorised works) and the comfort and safety of passengers or customers.

4. Specified works (and any protective works specified by the engineer pursuant to paragraph 3(4) above) shall, when commenced, be constructed—

- (a) with all reasonable dispatch in accordance with the plans approved (or deemed to have been approved) or settled as aforesaid,
- (b) under the supervision (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 reasonably practicable, and except to the extent permitted by any approval of plans under paragraph 3(1) above, so as not to interfere with or obstruct the free, uninterrupted

(3) 1990 c. 8.

and safe use of any railway of Railtrack PLC or the traffic thereon, the operation of the Station or the use by passengers of railway property;

and, if any damage to railway property or any such interference or obstruction is caused or takes place in consequence of the construction of the specified works, the undertaker shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay to Railtrack PLC, or procure the payment to Railtrack PLC of, all reasonable expenses to which Railtrack may be put and compensation for any loss or damage which it may sustain by reason of any such damage, interference or obstruction which may occur.

5. The undertaker shall—

- (a) at all times afford reasonable facilities to the engineer for access to the specified works during their construction, and
- (b) supply the engineer with all such information as he may reasonably require with regard to the specified works or the method of construction thereof.

6.—(1) If any alterations or additions, either permanent or temporary, to railway property are reasonably necessary during the construction of the specified works or during a period of 12 months after the completion of those works in consequence of the construction of the specified works 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 undertaker reasonable notice of its intention to carry out such alterations or additions, the undertaker shall pay to Railtrack PLC the reasonable cost thereof including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by 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 provide such details of the formula by which those sums have been calculated as the undertaker 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 undertaker to Railtrack PLC under this paragraph.

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

- (a) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, watching, lighting and signalling railway property in order to prevent as far as is possible all interference, obstruction, danger or accident arising from works for the maintenance of or the failure of the authorised works,
- (b) resulting from any speed restrictions which may, in the opinion of the engineer, be required to be imposed as a result of the construction, maintenance or failure of the authorised works, or from the substitution, suspension or diversion of railway services which the engineer considers may be necessary for the same reason,
- (c) in respect of any additional temporary lighting of railway property in the vicinity of the authorised works, made reasonably necessary as a result of the authorised works or the failure of those works.

8.—(1) If at any time after the completion of the specified works Railtrack PLC gives notice to the undertaker informing it that the state of maintenance of the specified works appears to be such as adversely affects the operation of railway property, the undertaker 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.

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(2) If within—

- (a) a period of 28 days after notice has been given to the undertaker under sub-paragraph (1) above, or
- (b) in the case of an emergency, such shorter period as the occasion may require,

the undertaker does not commence, and continue with reasonable dispatch, the steps required to be taken in consequence of the notice, Railtrack may without further notice to the undertaker itself take those steps, including any steps which require Railtrack to enter or use property belonging to or under the control of the undertaker.

(3) The cost to Railtrack of implementing sub-paragraph (2) above shall be repaid to Railtrack PLC by the undertaker.

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

10. All temporary works and equipment erected or placed by the undertaker under the powers of this Order (other than in the course of the construction of the specified works) on, over or under any railway of Railtrack PLC shall, as soon as reasonably practicable, be removed by the undertaker at times to be agreed with, and to the reasonable satisfaction of, the engineer and in such a way as to cause as little damage to railway property, and as little interference with or delay or interruption to the traffic on the railways of Railtrack PLC, as is possible; and if any damage to railway property or such interference, delay or interruption is caused by any such failure to remove any such temporary works and equipment the undertaker shall forthwith make good such damage and pay to Railtrack the reasonable costs and expenses to which Railtrack may be put and reasonable compensation for any loss which Railtrack may sustain by reason of such damage, interference, delay or interruption.

11. The undertaker shall not provide any illumination or illuminated sign on or in connection with the specified works in the vicinity of any railway belonging to Railtrack PLC unless it shall first have 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.

12.—(1) The undertaker shall pay to Railtrack PLC a sum equivalent to 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 or suffered by Railtrack—

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

and the undertaker shall indemnify Railtrack from and against all loss and damage arising out of or in connection with the maintenance of the specified works or any such failure, act or omission and the fact that any act or thing may have been done by Railtrack on behalf of the undertaker 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 undertaker from any liability under the provisions of this paragraph.

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

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

(4) Subject to the terms of any agreement between Railtrack PLC and the relevant train operators regarding the terms 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) above which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) above 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) above.

(6) In the assessment of any sums payable under this paragraph 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 PLC 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 undertaker under this paragraph or increasing the sums so payable.

(7) 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 restrictions of the use of Railtrack PLC’s railway network as a result of the construction or maintenance or failure of the authorised works or any such failure, act or omission as is mentioned in sub-paragraph (4) above.

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

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

14. Any provision of an agreement entered into under paragraph 13 above which provides for Railtrack PLC to require the transfer to the undertaker of the property referred to in that paragraph at any future date shall not be subject to the rule against perpetuities.

15. Any difference arising between the undertaker and Railtrack PLC under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by mediation in accordance with procedures to be agreed between Railtrack PLC and the undertaker or, in default of agreement as to the procedures for mediation, shall be referred to and settled by arbitration in accordance with article 36 above.

PART II

PROTECTION OF THE PORT OF LONDON AUTHORITY

16. The provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the Port of London Authority (“the Port Authority”), have effect for the protection of the Port Authority and the users of the river.

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

“construction” shall include execution, placing, altering, replacing, relaying and removal and, in its application to the tidal works which include or comprise any operation, means the carrying out of that operation and “construct” and “constructed” shall be construed accordingly;

“plans” shall include plans, sections, elevations, drawings, specifications and programmes and construction methods including where applicable, such relevant hydraulic information about the river as may be reasonably requested by the Port Authority;

“river” means the River Thames;

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“tidal work” means so much of any temporary or permanent work authorised by this Order (which includes the demolition of the existing Hungerford footbridge, any removal of gravel or other material, any dredging or similar work, any geotechnical investigations that may be undertaken and safeguarding works) as is in, on, under or over:—

- (a) the surface of land below the level of high water spring tides forming part of the river; or
- (b) any land owned, occupied or used by the Port Authority for operational purposes and land which will or may, in the reasonable opinion of the Port Authority, have an effect on the access to and the use of Charing Cross Pier or by pedestrians passing between the Victoria Embankment and Charing Cross Pier.

Works in the River and adjacent to Charing Cross Pier

18.—(1) The undertaker shall not commence tidal works until it has supplied to the Port Authority such proper and sufficient plans for the same as the Port Authority shall reasonably require and those plans have been approved in writing by the Port Authority (such approval not to be unreasonably withheld).

(2) A tidal work shall not be placed or constructed on the bed of the river under the provision of this Order unless the tidal work—

- (a) has been previously approved by the Secretary of State; or
- (b) if such approval has not been previously obtained a condition has been imposed in any approval given by the Port Authority to plans under the provisions of sub-paragraph (1) above that that tidal work will be removed if the Secretary of State so requires.

(3) The Port Authority shall notify the undertaker within a period of 28 days starting with the date on which such plans of tidal works have been furnished to the Port Authority, or such longer period as may be agreed in writing by the Port Authority and the undertaker, of its approval or disapproval of those plans.

(4) Any approval of the Port Authority required under this paragraph may be given subject to such reasonable conditions as the Port Authority may make for the protection of—

- (a) vessel movement on, or the flow or regime of, the river, or
- (b) the use of its land or the river for the purposes of performing its statutory functions,

including any relocation, or provision, of works, new works, moorings, apparatus and equipment necessitated by the tidal works, or any other works authorised by the Order, or their construction or maintenance.

(5) If within a period of 28 days starting from the date on which it receives proper and sufficient plans of a tidal work under sub-paragraph (1) above the Port Authority does not notify the undertaker of its approval or disapproval of those plans, it shall be deemed to have disapproved of the said plans or such part of the plans as it has not approved.

(6) Where the undertaker is aggrieved by—

- (a) the disapproval of the Port Authority of any plans submitted under sub-paragraph (1) above,
- (b) any term or condition upon which the Port Authority propose to approve the plans, or
- (c) any modification by the Port Authority of the plans,

it may within 28 days from the date upon which the Port Authority is deemed to have notified its disapproval of the plans or the date upon which the Port Authority notifies the undertaker of its decision, as the case may be, appeal to the Secretary of State.

(7) If an appeal to the Secretary of State is made, the following provisions shall apply—

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- (a) the appeal shall be made by written notice stating the grounds of the appeal,
 - (b) the appellant shall send a copy of the notice of appeal to the Port Authority,
 - (c) the Port Authority may make written representations to the Secretary of State within 14 days from receipt by it of the copy notice of appeal, and if it does so shall forthwith send a copy of its representations to the appellant,
 - (d) the Secretary of State may confirm, vary or revoke a decision or requirement against which an appeal is made and may make any consequential amendments necessary, and
 - (e) the Secretary of State may direct the Port Authority or the undertaker to give effect to the decision of the Secretary of State on the appeal and the Port Authority or the undertaker (as the case may be) shall forthwith comply with any direction given.
- (8) Without prejudice to the requirements which may be imposed by the Port Authority on the approval of plans for tidal works—
- (a) no more than two spans of Charing Cross Railway Bridge and the approaches to those spans shall be blocked partially or wholly to navigation at any one time,
 - (b) the two main navigation spans of Charing Cross Railway Bridge, being the second and third spans over the river from the Westminster shore, and the approaches to those spans, must not be blocked wholly, or partially, to navigation at the same time, and
 - (c) save for the span nearest to the Lambeth shore, the tidal works must not affect the width and headroom of the present spans of Charing Cross Railway Bridge as extended by the tidal works nor the depth of water beneath the spans without the prior agreement of the Port Authority.
- (9) The undertaker shall carry out all operations for the construction or maintenance of any tidal works with all reasonable despatch and to the reasonable satisfaction of the Port Authority so that vessel movement on, or the flow, or regime of the river and the exercise of the Port Authority's statutory functions shall not suffer more interference than is reasonably practicable and the Port Authority shall be entitled at all reasonable times, on giving such notice as may be reasonable in the circumstances, to inspect and survey such operations.
- (10) If any tidal work is constructed otherwise than in accordance with the requirements of this part of this Schedule or with any condition in an approval pursuant to sub-paragraph (4) above, the Port Authority may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this part of this Schedule or that condition and if the undertaker does not do so or is unable to do so then the Port Authority may in writing require the undertaker to remove, alter or pull down the tidal work and where the tidal work is removed to restore the site of that work to its condition prior to the construction of the tidal work to such an extent and within such limits as the Port Authority think proper.
- (11) The undertaker shall, upon completion of the construction or maintenance of any part of an authorised work, remove as soon as is practicable any temporary tidal works and materials for such temporary tidal works carried out or placed only for the purposes of that part of the authorised work and any materials which formed part of the existing Hungerford footbridge which have been dismantled and have not been removed, and shall make good the site to the reasonable satisfaction of the Port Authority.
- (12) The undertaker shall not—
- (a) deposit in or allow to fall or be washed into the river any gravel, soil or other material except to the extent permitted by any approval of a tidal work;
 - (b) discharge or allow to escape either directly or indirectly into the river any offensive or injurious matter in suspension or otherwise; or
 - (c) discharge into the river any water by any watercourse, public sewer or drain without the consent of the Port Authority and such consent may be given subject to such terms and

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conditions as the Port Authority may reasonably impose but shall not be unreasonably withheld.

(13) The undertaker shall (subject to sub-paragraph (14) below) remove from the river any pile, stump or other obstruction which becomes exposed in consequence of a tidal work.

(14) If it is not reasonably practicable to remove a pile, stump or other obstruction it shall be cut off at such level below the bed of the river as the Port Authority may direct.

(15) If the undertaker fails to remove or cut off (as the case may be) any pile, stump or other obstruction pursuant to sub-paragraphs (13) and (14) above within a period of 28 days beginning with the date of receipt of a written notice from the Port Authority requiring its removal or cutting off, the Port Authority may carry out the removal or cutting off and recover the cost of doing so from the undertaker.

(16) If a tidal work is abandoned or falls into decay, the Port Authority may by notice in writing require the undertaker either to repair or restore the tidal work, or any part of it, or to remove the tidal work and restore the site of that work to its condition prior to the construction of the tidal work, to such an extent and to such limits as the Port Authority think proper.

(17) If a work consisting partly of a tidal work and partly of works on or over land above the level of high water spring tides is abandoned or falls into decay and that part of the works on or over land above the level of high water springs is in such condition as to interfere or cause reasonable apprehension that it may interfere with the right of navigation on the river or other public rights over the foreshore, the Port Authority may include that part of the works or any portion thereof in any notice under sub-paragraph (16).

(18) If on the expiration of such reasonable period as may be specified in a notice under sub-paragraph (16) above the work specified therein has not been completed to the satisfaction of the Port Authority, the Port Authority may undertake that work and any expenditure reasonably incurred by them in so doing shall be recoverable from the undertaker.

(19) On completion of the construction of the tidal works, the undertaker shall supply to the Port Authority a plan on a scale of not less than 1 in 2500 and sections and elevations on the scale of not less than 1 in 100 showing to the Port Authority's reasonable satisfaction the situation and levels of the permanent tidal works at that time.

Facilities for Navigation

19.—(1) The undertaker shall mark and light the tidal works in accordance with such directions as the Port Authority shall give from time to time.

(2) The undertaker shall not in the exercise of the powers granted by this Order interfere with the marks, lights and other navigational systems on Charing Cross Railway Bridge without the agreement of the Port Authority and shall ensure access remains available to them during and following construction or maintenance of the tidal works.

(3) The undertaker shall provide at the tidal works, or shall afford reasonable facilities at such works (including an electricity supply), for the Port Authority to provide at the undertaker's cost, from time to time, such navigational lights, signals or other apparatus for the benefit, control and direction of navigation as the Port Authority may deem necessary by reason of the construction, or maintenance of the tidal works and shall ensure access remains available to them during and following construction or maintenance of the tidal works.

(4) Without prejudice to section 133 of the Port of London Act 1968 the undertaker shall comply with the directions of the Port Authority's harbourmaster from time to time with regard to the lighting on the pedestrian footways on the tidal works or the screening of such lighting to ensure that it is not a hazard to navigation on the river.

Survey of Riverbed

20.—(1) Before the construction of the tidal works is commenced the Port Authority in conjunction with the undertaker and at the undertaker's cost shall carry out a survey of such parts of the river as are in the vicinity of Charing Cross Railway Bridge and which might be affected by any siltation or scouring deriving from the tidal works for the purpose of establishing the condition of the river at that time.

(2) The Port Authority shall carry out such surveys of the river as are reasonably required during the construction of the tidal works to ascertain the effect of the tidal works, on the river and the Port Authority shall make available to the undertaker, at a reasonable charge, the results of any such survey.

(3) After completion of the tidal works, the Port Authority in conjunction with the undertaker and at the undertaker's cost shall carry out a further survey of the parts of the river which were surveyed prior to the construction of the tidal works and a survey of the completed tidal works for the purpose of establishing the condition of the river and the effect that the tidal works are having on navigation, the flow and the regime of the river and the exercise of the Port Authority's statutory functions.

(4) If any part of the river becomes subject to siltation or scouring and—

- (a) such siltation or scouring is siltation or scouring which is wholly or partly caused by a tidal work during the period beginning with the commencement of the construction of that tidal work and ending with the expiration of 10 years after the date on which the tidal work is completed, and
- (b) for the safety of navigation or in the interests of persons using the river or for the protection of works in the river, such siltation or scouring should in the reasonable opinion of the Port Authority be removed or made good,

the undertaker shall either arrange for the work to be undertaken itself or pay to the Port Authority any additional expense to which the Port Authority may reasonably be put in dredging the river to remove the siltation or in making good the scouring so far as (in either case) it is attributable to the tidal work.

General Protection

21.—(1) Save to the extent permitted by any approval of a tidal work the undertaker shall not under the powers of this Order without the consent of the Port Authority (not to be unreasonably withheld) acquire or use any part of the river bed or foreshore of the river or any other land of the Port Authority.

(2) If any or all of the footbridges and ancillary works constructed under, in or over the river under the powers of this Order cease to be highway and are permanently removed, there shall revert to the Port Authority, at no cost, any interest of the undertaker in the airspace and riverbed in or over the river previously occupied by such structures.

(3) Subject to paragraph 2 of Schedule 13 to this Order the exercise in, under or over the river by the undertaker of any of its functions under this Order shall be subject to any enactment relating to or made by the Port Authority including byelaws or directions of the Port Authority and the exercise by the Port Authority or its harbourmaster of any powers and functions conferred on it or him by or under any enactment.

(4) At all times during construction or maintenance of the authorised works the undertaker shall ensure the maintenance of reasonable access to Charing Cross Pier (which includes access from both existing access points from the Victoria Embankment) and the maintenance of such other reasonable access to the river as the Port Authority may require for the exercise of its statutory functions.

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22.—(1) The undertaker shall be responsible for and make good to the Port Authority all costs, charges, damages and expenses which may reasonably be incurred by the Port Authority—

- (a) by reason of the construction or maintenance of the authorised works or failure thereof, or
- (b) by reason of any act or omission of the undertaker or of any persons in its employ or of its contractors or agents or others whilst engaged upon the construction or maintenance of the authorised works or dealing with any failure of such works,

and the undertaker shall indemnify the Port Authority from and against all claims and demands arising out of or in connection with the authorised works or any such failure, act or omission and the fact that any act or thing may have been done by the Port Authority on behalf of the undertaker or done by the undertaker, any person in its employ or its contractors or agents in accordance with plans or particulars submitted to or modifications or conditions specified by the Port Authority, or in a manner approved by the Port Authority, or under its supervision or the supervision of its duly authorised representative shall not (if it was done or required without negligence on the part of the Port Authority or its duly authorised representative, or any person in its employ or its contractors or agents) excuse the undertaker from liability under the provisions of this indemnity.

(2) The Port Authority shall give the undertaker reasonable notice of any such claim or demand as is referred in sub-paragraph (1) above and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

23. Any difference arising between the undertaker and the Port Authority under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration in accordance with article 36 above.

PART III

PROTECTION OF BRITISH TELECOMMUNICATIONS PLC

24.—(1) The provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and British Telecommunications PLC, have effect for the protection of BT.

(2) In this Part of this Schedule—

“BT” means British Telecommunications PLC;

“installation” shall include construction and “construct” shall be construed accordingly; and

“telecommunications operator” means the operator of a telecommunications code system, and “operator”, “telecommunications apparatus”, “telecommunications code system” and “telecommunications system” have the same meanings as in Schedule 4 to the Telecommunications Act 1984⁽⁴⁾.

25. The temporary stopping up or diversion of any street under article 7 above shall not affect any right of a telecommunications operator under paragraph 9 of the Telecommunications Code, contained in Schedule 2 to the Telecommunications Act 1984, in respect of any apparatus which at the time of the temporary stopping up or diversion is in that street.

26. If BT suffers damage in consequence of the construction, use or failure of the works or any subsidence resulting from the works, the undertaker shall pay the cost reasonably incurred by BT in making good such damage, and shall indemnify BT against claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by BT by reason or in consequence of any such damage, but—

(4) 1984 c. 12.

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- (a) nothing in this paragraph shall impose any liability on the undertaker with respect to any damage to the extent that such damage is attributable to any act or omission of BT, its officers, servants, contractors or other agents; and
- (b) BT shall give to the undertaker reasonable notice of any claim, demand or proceedings and shall make no settlement or compromise thereof without the consent of the undertaker, such consent not to be unreasonably withheld.

27. Nothing in this Order shall affect any right of a telecommunications operator under Schedule 2 to the Telecommunications Act 1984.

PART IV

PROTECTION OF MISCELLANEOUS UNDERTAKINGS

28. The provisions of this Part of this Schedule shall have effect—

- (a) in relation to each of the protected persons (save in the case of paragraph 30(4) below, which has effect only in relation to LRT);
- (b) unless otherwise agreed in writing by the protected person and the undertaker.

29. In this Part of this Schedule—

“approval” in relation to specified works means approval of the engineer appointed by the protected person whose protected property is affected by those works such approval not to be unreasonably withheld;

“construction” shall include reconstruction, altering, replacing, relaying, removal, maintenance and repair of the specified works;

“engineer” means the engineer appointed by the protected persons;

“plans” shall include sections, drawings, particulars and schedules of construction;

“protected person” means, severally, LRT, the Arts Council, or the South Bank Board;

“protected property” means in relation to each protected person any lands held or used by that protected person for the purposes of its operation, and any works, apparatus and equipment connected therewith for the maintenance or operation of which that protected person is responsible when the relevant specified works are begun; and

“the specified works” means so much of the authorised works as may be situated within 15 metres (measured in any direction) of, or may in any way affect, protected property and includes the construction of any such work.

30.—(1) The undertaker shall not under the powers conferred by or under this Order without the consent of the protected person, acquire or enter upon, take or use whether temporarily or permanently or acquire any new rights over protected property.

(2) This paragraph shall not prevent the undertaker acquiring the interest of any person other than the protected person in the lands mentioned in sub-paragraph (1) above, required for the purposes of the authorised works.

(3) The undertaker shall not in exercise of the powers of article 3(3) above carry out any works outside the limits of deviation which affect protected property except with the consent of the protected person, which consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

(4) Subject to sub-paragraph (5) below, the powers under article 5 above to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense

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(within the meaning of the Highways Act 1980⁽⁵⁾) is under the control or management of, or is maintainable by, LRT, except with the consent of LRT.

(5) Sub-paragraph (4) above shall not apply to the carrying out under this Order of emergency works, within the meaning of Part III of the 1991 Act.

(6) The consent of the protected person under this sub-paragraph shall not be unreasonably withheld but may be given subject to reasonable conditions.

(7) The undertaker shall not in the exercise of the powers conferred by this Order, without the consent of the protected person, prevent or hinder pedestrian or vehicular access to any protected property.

(8) The provisions of Schedule 11 to this Order shall not apply to works, apparatus and equipment to which this Part of this Schedule applies.

(9) The undertaker shall not exercise the powers under article 14(3) or 15 above or the powers under section 11(3) of the 1965 Act, in respect of any protected property except with the consent of the protected person.

31.—(1) The undertaker shall, before commencing the specified works, furnish to the protected person such proper and sufficient plans specified of the specified works as may reasonably be required for the approval of the engineer and shall not commence the specified works until the plans have been approved in writing by the engineer or settled by arbitration.

(2) If, within a period of 56 days beginning with the date on which plans have been furnished to the protected person under sub-paragraph (1) above, the engineer has not notified his disapproval and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted.

(3) If, within a period of 56 days beginning with the date on which plans have been furnished to the protected person under sub-paragraph (1) above, the protected person shall give notice to the undertaker that the protected person desires itself to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of, or the safe operation of protected property, then, if the undertaker desires such part of the specified works to be constructed, the protected person shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with approved plans.

(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 the specified works to ensure the stability of protected property, the continuation of the safe and effective operation of the protected person's operation including any relocation of works, apparatus and equipment necessitated by the specified works and the comfort and safety of passengers or customers, and such protective works as may be reasonably necessary for those purposes shall be constructed with all reasonable dispatch, and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed.

32.—(1) The undertaker shall give to the engineer not less than 56 days' notice of its intention to commence the construction of any of the specified works and also, except in an emergency (when it shall give such notice as may be reasonably practicable), of its 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 protected property.

(2) 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, and in such manner as to cause as little damage as may be to protected property and as little interference as may be with the

(5) 1980 c. 66.

conduct of protected person's operation and the use by passengers or customers of its property and, if any damage to protected property or any such interference is caused by the carrying out of the specified works, the undertaker shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay on demand to the protected person all reasonable expenses to which the protected person may be put and compensation for any loss which the protected person may sustain by reason of any such damage or interference.

(3) Nothing in this paragraph shall impose any liability on the undertaker with respect to any damage, cost, expense or loss which is attributable to the act, neglect or default of a protected person or its servants or agents.

33. Without prejudice to the generality of paragraphs 31 and 32 above a protected person may, in approving the plans of or in supervising the carrying out of the specified works or of any protective works carried out by the undertaker by virtue of the provisions of paragraph 31(3) above, require that—

- (a) nothing shall be done by or on behalf of the undertaker which unreasonably impedes the free, uninterrupted and safe flow of passengers or customers;
- (b) dust sheets and other works and working methods are used so as to prevent so far as practicable any dust or dirt from the relevant works affecting such persons; and
- (c) adequate signing of all alterations of routes for such persons and of any hazards or obstructions to the free movement of such persons is provided.

34. The undertaker shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to those specified works or the method of construction thereof.

35. During the construction of any part of the specified works under paragraph 31 above by a protected person under this Part of this Schedule, the protected person shall at all times afford reasonable facilities to the undertaker and its agents for access to those works, and shall supply the undertaker with such information as they may reasonably require with regard to such works or the method of construction thereof.

36.—(1) If any alterations or additions either permanent or temporary, to protected property are reasonably necessary during the construction of the specified works, or during a period of 12 months after the completion thereof, in consequence of the construction of the specified works, such alterations and additions may be carried out by the protected person after giving the undertaker reasonable notice of its intention to carry out such alterations or additions and the undertaker shall pay the protected person on demand the cost thereof as certified by the engineer, including in respect of permanent alterations and additions a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by the protected person in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing protected 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 undertaker to the protected person under this paragraph.

37. The undertaker shall repay to any protected person all costs, charges and expenses reasonably incurred by the protected person—

- (a) in constructing any part of the specified works on behalf of the undertaker or any protective works under the provisions of paragraph 31 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 protected person in maintaining and renewing such works;
- (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and

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lighting its protected property in order to prevent, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;

- (c) resulting from any speed restrictions which in the opinion of the engineer are necessary by reason of the construction or failure of the specified works, or from the substitution or diversion of services which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of its protected property in the vicinity of the specified works, being lighting made reasonably necessary by reason of the construction or failure of the specified works; and
- (e) in respect of the consideration of plans and the supervision by the engineer of the construction of the specified works.

38.—(1) The undertaker shall be responsible for and make good to the protected person, all 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 protected person—

- (a) by reason of the construction of the specified works or the failure thereof, or
- (b) by reason of any act or omission of the undertaker, of any person in his employ, or of his contractors or others whilst engaged upon the construction of the specified works,

and the undertaker shall indemnify the protected person from and against all claims and demands arising out of or in connection with the construction of the specified works or any such failure, act or omission, and the fact that any act or thing may have been done in accordance with any requirement of the engineer or under his supervision, shall not (if it was not attributable to the act, neglect or default of the protected person, or of any person in their employ, or of their contractors or agents) excuse the undertaker from any liability under the provisions of this Part of this Schedule.

(2) The protected person shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

39. Any difference arising between the undertaker and a protected person under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be resolved by arbitration under article 36 above.

PART V

FURTHER PROTECTION OF LONDON REGIONAL TRANSPORT

40. The provisions of this Part of this Schedule shall take effect between LRT and the undertaker, unless otherwise agreed in writing between LRT and the undertaker.

41. In this Part of this Schedule—

“construction” shall include reconstruction, altering, replacing, relaying, removal, maintenance and repair of the specified works;

“engineer” means the engineer appointed by LRT;

“plans” includes sections, drawings, particulars and schedules of construction;

“the pier” means Charing Cross Pier and any works, apparatus and equipment connected therewith; and

“the specified works” means so much of the authorised works as may be situated within 15 metres (measured in any direction) of, or may in any way affect, the pier and includes the construction, of any such work.

42.—(1) The undertaker shall not under the powers conferred by this Order without the consent of LRT, acquire or enter upon, take or use (whether temporarily or permanently) or acquire any new rights over the pier.

(2) This paragraph shall not prevent the undertaker acquiring any interest of any person other than LRT in the lands mentioned in sub-paragraph (1) above which is required for the purposes of the authorised works.

(3) The undertaker shall not in exercise of the powers of article 3(3) above carry out any works outside the limits of deviation which affect the pier except with the consent of LRT, which consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

(4) The undertaker shall not in the exercise of the powers of this Order, without the consent of LRT, prevent or hinder pedestrian or vehicular access to the pier.

(5) The provisions of Schedule 11 to this Order shall not apply to works, apparatus and equipment to which this Part of this Schedule applies.

(6) The undertaker shall not exercise the powers under article 14(3) above, or article 15 above or the powers under section 11(3) of the 1965 Act, in respect of the pier except with the consent of LRT, which consent shall not be unreasonably withheld but may be given subject to reasonable conditions.

43.—(1) The undertaker shall, before commencing the specified works, furnish to LRT such proper and sufficient plans thereof as may reasonably be required for the approval of the engineer and shall not commence the specified works until the plans have been approved in writing by the engineer or settled by arbitration.

(2) If, within a period of 56 days beginning with the date on which plans have been furnished to LRT under sub-paragraph (1) above, the engineer has not notified his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the plans as submitted.

(3) If, within a period of 56 days beginning with the date on which plans have been furnished to LRT under sub-paragraph (1) above, LRT shall give notice to the undertaker that LRT desires itself to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of, or the safe operation of the pier, then, if the undertaker desires such part of the specified works to be constructed, LRT shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with approved plans.

(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 the specified works to ensure the stability of the pier, the continuation of the safe and effective operation of the pier including any relocation of works, apparatus and equipment necessitated by the specified works and the comfort and safety of passengers or customers using the pier, and such protective works as may be reasonably necessary for those purposes shall be constructed with all reasonable dispatch, and the undertaker shall not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed.

44.—(1) The undertaker shall give to the engineer not less than 56 days' notice of its intention to commence the construction of any of the specified works and also, except in an emergency (when they shall give such notice as may be reasonably practicable), of its intention to carry out any such works for the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with the pier.

(2) 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, and in such manner as to cause as little damage as may be to the pier and as little interference as may be with the conduct of LRT's operation and the use by passengers or customers of the pier and, if any damage to the pier

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or any such interference is caused by the carrying out of the specified works, the undertaker shall, notwithstanding any such approval as aforesaid, make good such damage and shall pay on demand to LRT all reasonable expenses to which it 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 undertaker with respect to any damage, cost, expense or loss which is attributable to the act, neglect or default of LRT or its servants or agents.

45. Without prejudice to the generality of paragraphs 43 and 44 above LRT may, in approving the plans of or in supervising the carrying out of the specified works or of any protective works carried out by the undertaker by virtue of the provisions of paragraph 43(3) above, impose reasonable conditions with a view to ensuring that—

- (a) nothing shall be done by or on behalf of the undertaker which unreasonably impedes the free, uninterrupted and safe flow of passengers or customers to or from the pier;
- (b) dust sheets and other works and working methods are used so as to prevent so far as practicable any dust or dirt from the relevant works affecting such persons; and
- (c) adequate signing of all alterations of routes for such persons and of any hazards or obstructions to the free movement of such persons is provided.

46. The undertaker shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to those specified works or the method of construction thereof.

47. During the construction of any part of the specified works under paragraph 43 above by LRT under this Part of this Schedule, LRT shall at all times afford reasonable facilities to the undertaker and its agents for access to those works, and shall supply the undertaker with such information as they may reasonably require with regard to such works or the method of construction thereof.

48.—(1) If any alterations or additions either permanent or temporary, to the pier are reasonably necessary during the construction of the specified works, or during a period of 12 months after the completion thereof, in consequence of the construction of the specified works, such alterations and additions may be carried out by LRT after giving the undertaker reasonable notice of its intention to carry out such alterations or additions and the undertaker shall pay LRT on demand the cost thereof as certified by the engineer, including in respect of permanent alterations and additions a capitalised sum representing any increase in the costs which may be expected to be reasonably incurred by LRT in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If the cost of maintaining, working or renewing the pier 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 undertaker to LRT under this paragraph.

49. The undertaker shall repay to LRT all costs, charges and expenses reasonably incurred by LRT—

- (a) in constructing any part of the specified works on behalf of the undertaker or any protective works under the provisions of paragraph 43 above, including, in respect of any permanent protective works, a capitalised sum representing the costs which may be expected to be reasonably incurred by LRT in maintaining and renewing such works;
- (b) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting its pier in order to prevent, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;

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- (c) resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed by reason of the construction or failure of the specified works, or from the substitution or diversion of services which may be reasonably necessary for the same reason;
- (d) in respect of any additional temporary lighting of its pier in the vicinity of the specified works, being lighting made reasonably necessary by reason of the construction or failure of the specified works; and
- (e) in respect of the consideration of plans and the supervision by the engineer of the construction of the specified works.

50.—(1) The undertaker shall be responsible for, and make good to LRT, all costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to, or reasonably incurred by, LRT—

- (a) by reason of the construction of the specified works or the failure thereof, or
- (b) by reason of any act or omission of the undertaker or any person in his employ, or of his contractors or others whilst engaged upon the construction of the specified works,

and the undertaker shall indemnify LRT from and against all claims and demands arising out of or in connection with the construction of the specified works or any such failure, act or omission as aforesaid, and the fact that any act or thing may have been done in accordance with any requirement of the engineer or under his supervision, shall not (if it was not attributable to the act, neglect or default of the LRT, or of any person in their employ, or of their contractors or agents) excuse the undertaker from any liability under the provisions of this Part of this Schedule.

(2) LRT shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the undertaker.

51. Any difference between the undertaker and LRT under this Part of this Schedule (other than a difference as to the meaning or construction of this Part of this Schedule) shall be referred to and settled by arbitration under article 36 above.