

SCHEDULES

SCHEDULE 12

Article 37

FOR PROTECTION OF SPECIFIED UNDERTAKERS

Interpretation

1. In this Schedule—

“apparatus” means—

- (a) in the case of a specified undertaker which is an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(1)) belonging to, or maintained by, that undertaker;
- (b) in the case of a specified undertaker which is a gas undertaker, mains, pipes, pressure governors, ventilators or other apparatus belonging to, or maintained by, a gas transporter for the purposes of the transportation and storage of gas;
- (c) in the case of a specified undertaker which is a water undertaker—
 - (i) mains, pipes or other apparatus belonging to, or maintained by, the undertaker for the purposes of water supply; and
 - (ii) any water main or service pipe (or part of it) that is subject to an agreement to adopt made under section 51A of the Water Industry Act 1991(2); and
- (d) in the case of a specified undertaker which is a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure for the lodging therein of apparatus or for giving access to such apparatus;

“construction” includes execution, placing, altering, replacing, relaying and removal and, in its application to works which include or comprise any operation, means the carrying out of that operation;

“emergency works” has the same meaning as in section 52 of the 1991 Act;

“in”, in a context referring to apparatus in land, includes under, over, across, along or upon land;

“necessary alternative apparatus” means alternative apparatus adequate to enable a specified undertaker to fulfil its statutory or licensed functions in a manner no less efficient than previously;

“plans” includes sections, specifications and method statements;

(1) 1989 c. 29.
(2) 1991 c. 56.

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“specified undertaker” means—

- (a) EDF Energy plc whose registered office is situated at 40 Grosvenor Place, Victoria, London SW1X 7EN;
- (b) National Grid Gas Plc, whose registered office is 1–3 Strand, London WC2N 5EH; and
- (c) Thames Water Utilities Limited whose registered office is situated at Clearwater House, Vastern Road, Reading RG1 8DB,

or any person succeeding any such company as a licence holder within the meaning of Part 1 of the Electricity Act 1989, as a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽³⁾, as a water undertaker within the meaning of the Water Industry Act 1991 or as a sewerage undertaker within the meaning of Part 1 of that Act, and “the specified undertaker” in relation to any apparatus means the specified undertaker to whom the apparatus belongs or by whom it is maintained; and

“specified work” means any of the authorised works which—

- (a) will or may be situated over, or within 15 metres measured in any direction of, or may in any way adversely affect, any apparatus; or
- (b) wherever situated, imposes any load upon any sewer, the removal of which has not been required under paragraph 8.

Application of Schedule 8

2. Paragraphs 1(1) and 2 of Schedule 8 shall not apply in relation to a specified undertaker and paragraphs 1(3) and 1(4) of that Schedule shall have effect as if they referred to apparatus removed under this Schedule.

Apparatus in stopped up streets

3. Where any street is stopped up under article 9 (stopping up of streets and extinguishment of rights), any specified undertaker whose apparatus is in the street shall have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up, but nothing in this paragraph shall affect any right of DLRL or of the specified undertaker to require the removal of that apparatus under paragraph 8 or the power of DLRL to carry out works under paragraphs 19 to 28.

4. DLRL shall give not less than 28 days' notice in writing of its intention to stop up any street under article 9 (stopping up of streets and extinguishment of rights) to any specified undertaker whose apparatus is in that street.

On-street apparatus

5. This Schedule shall not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between DLRL and the specified undertaker are regulated by the provisions of Part 3 of the 1991 Act.

Acquisition of land

6. DLRL shall not acquire any apparatus from a specified undertaker pursuant to this Order otherwise than by agreement.

7. DLRL may in exercise of the powers conferred by this Order acquire or appropriate any land in which any apparatus is placed and, following the removal of such apparatus in accordance with

(3) 1986 c. 44 as amended by the Utilities Act 2000 (c. 27), section 76.

the provisions of this Schedule, any rights in that land relating to that apparatus shall be extinguished but no apparatus shall be removed nor shall any right of the specified undertaker to use, maintain or renew any apparatus be extinguished until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the specified undertaker.

Removal of apparatus

8. Paragraphs 9 to 11 apply where—

- (a) DLRL requires the removal of any apparatus for the purpose of constructing any of the authorised works and gives to the specified undertaker not less than 56 days' written notice of that requirement together with a plan 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 or proposed exercise of any of the powers of this Order, the specified undertaker reasonably requires to remove any apparatus.

9. DLRL shall, if it is practicable to do so, afford to the specified undertaker the necessary rights and facilities for the construction of any necessary alternative apparatus in other land which is available for the purpose and which is held or used, or intended for use, by DLRL for the purpose of its undertaking or in which it has sufficient rights or interests and thereafter for the use, maintenance, repair, renewal and inspection of such apparatus and, if DLRL is unable to obtain those rights and facilities, the specified undertaker shall, on receipt of a written notice to that effect from DLRL, use its best endeavours to obtain the necessary rights and facilities.

10. Any alternative apparatus to be constructed by the specified undertaker pursuant to paragraph 9 shall be constructed in such manner, and in such line or situation, as may be agreed between the specified undertaker and DLRL or, in default of agreement, determined by arbitration.

11. The specified undertaker shall, after the manner of construction and the line or situation of any necessary alternative apparatus have been agreed or determined and after the grant to or obtaining by the specified undertaker of any such facilities and rights as are referred to in paragraph 9, proceed with all reasonable despatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by DLRL to be removed in accordance with paragraph 8.

Removal of apparatus and construction of alternative apparatus by DLRL

12. Paragraphs 13 to 15 apply to so much of the work necessary in connection with the construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land held or used, or intended for use, by DLRL for the purpose of its undertaking.

13. If DLRL gives notice in writing to the specified undertaker that it desires to carry out any part of any work to which this paragraph applies, such work, instead of being carried out by the specified undertaker, may be carried out by DLRL with the prior written consent of the specified undertaker (which shall not be unreasonably withheld and shall be subject to any such conditions as are reasonable and proper to protect the apparatus) in accordance with plans and in a position agreed between the specified undertaker and DLRL or, in default of agreement, determined by arbitration, with all reasonable despatch under the superintendence (if given) and to the reasonable satisfaction of the specified undertaker.

14. In carrying out any work under paragraph 13 DLRL shall comply with all statutory obligations which would have been applicable had the works been carried out by the specified undertaker.

15. Nothing in paragraph 13 shall authorise DLRL to carry out the actual placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or, where

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the apparatus is laid in a trench, execute any filling around the apparatus within 300 millimetres (measured in any direction) of the apparatus.

Facilities and rights for alternative apparatus

16. Where, in accordance with the provisions of this Schedule, DLRL affords to the specified undertaker facilities and rights for the construction, use, maintenance, renewal and inspection in land of DLRL of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between DLRL and the specified undertaker or, in default of agreement, determined by arbitration.

17. In determining the terms and conditions mentioned in paragraph 16 in respect of alternative apparatus to be constructed across, under or along the authorised works the arbitrator shall—

- (a) give effect to all reasonable requirements of DLRL for ensuring the safety of the authorised works and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any such works; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the case, give effect to any terms and conditions applicable to the apparatus (if any) constructed across, under or along the authorised works for which the alternative apparatus is to be substituted and to any other reasonable requirements of the specified undertaker.

18. If the facilities and rights to be afforded by DLRL in respect of any alternative apparatus under paragraph 16 and the terms and conditions subject to which the same are to be granted are, in the opinion of the arbitrator, more or less favourable on the whole to the specified undertaker 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 DLRL by or to the specified undertaker in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the case.

Retained apparatus: protection and plan approval

19. Not less than 56 days before commencing to construct or renew any specified work, DLRL shall submit to the specified undertaker plans of the works.

20. In relation to a work which is a specified work because of its proximity to or effect on a sewer, the plans to be submitted to the specified undertaker under paragraph 19 shall be detailed plans describing—

- (a) the exact position of the specified work;
- (b) the level at which it is proposed to be constructed or renewed;
- (c) the manner of its construction or renewal;
- (d) the position of all sewers within 15 metres of the specified work or upon which the specified work will impose a load; and
- (e) by way of detailed drawings, every alteration proposed to be made to any such sewer.

21. DLRL shall not commence the construction or renewal of any specified work to which paragraph 20 applies until the specified undertaker has given written approval of the plans so submitted.

22. Any approval of the specified undertaker required under paragraph 21—

- (a) may be given subject to reasonable conditions for any purpose mentioned in paragraph 23;
- (b) shall not be unreasonably withheld; and

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

23. In relation to a work to which paragraph 20 applies, the specified undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its sewerage system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any sewer.

24. A specified work shall be constructed (and in the case of any temporary work removed) only in accordance with—

- (a) the plans submitted as aforesaid (and, in the case of plans relating to sewers, approved, deemed to have been approved or settled by arbitration, as amended from time to time by agreement between DLRL and the specified undertaker); and
- (b) all reasonable requirements made by the specified undertaker for the alteration, or otherwise for the protection, of the apparatus, or for securing access thereto;

and the specified undertaker shall be entitled by its officer to watch and inspect the carrying out of the work.

25. If within 42 days after the submission to it of any plans under paragraph 19, in consequence of the works proposed by DLRL the specified undertaker reasonably requires the removal of any apparatus and gives written notice to DLRL of that requirement, the foregoing provisions of this Schedule shall have effect as if the removal of such apparatus had been required by the specified undertaker under paragraph 8.

26. Nothing in paragraph 19 or 25 shall preclude DLRL from submitting at any time, or from time to time, but in no case less than 28 days before commencing the construction of any specified work, new plans thereof instead of the plans previously submitted, and thereupon the provisions of those paragraphs shall apply to, and in respect of, such new plans save that the reference in paragraph 25 to 42 days shall be treated as a reference to 21 days.

27. DLRL shall not be required to comply with paragraph 19 in a case where it is necessary to carry out emergency works but, in such a case, it shall give to the specified undertaker notice so soon as reasonably practicable, and a plan of the works so soon as reasonably practicable thereafter, and shall comply with paragraph 24 so far as reasonably practicable in the circumstances.

28. Nothing in paragraph 27 shall entitle DLRL to carry out works to any apparatus but, upon receipt of notice from DLRL, the specified undertaker shall proceed to carry out such works as may be required with all reasonable despatch.

Co-operation

29. Where in consequence of the proposed construction of any of the authorised works, DLRL or a specified undertaker requires the removal of apparatus under paragraph 8 or a specified undertaker makes requirements for the protection or alteration of apparatus under paragraph 24, DLRL shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and each specified undertaker shall use its best endeavours to co-operate with DLRL for that purpose.

Access

30. If in consequence of the exercise of the powers of this Order the access to any apparatus is materially obstructed, DLRL shall provide such alternative means of access to such apparatus as will enable the specified undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

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Expenses

31. Subject to the provisions of the following paragraphs, DLRL shall repay to the specified undertaker the reasonable expenses incurred by the specified undertaker in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or exercise of statutory powers for such apparatus);
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by DLRL of any power under this Order;
- (c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by DLRL of any power under this Order; and
- (d) any other work or thing rendered reasonably necessary in consequence of the exercise by DLRL of any such power;

within a reasonable time of being notified by the specified undertaker that it has incurred such expenses.

32. There shall be deducted from any sum payable under paragraph 31 the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

33. If in pursuance of the provisions of this Schedule—

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

and the placing of apparatus of that type or capacity or of those dimensions, or the placing of apparatus at that depth, as the case may be, is not agreed by DLRL or, in default of agreement, is not determined by arbitration to be necessary having regard, among other things, to the nature of the authorised works, then, if such placing involves cost in the construction of works under paragraphs 9 to 11 exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the specified undertaker by virtue of paragraph 31 above shall be reduced by the amount of that excess.

34. For the purposes of paragraph 33—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

35. An amount which apart from this paragraph would be payable to the specified undertaker in respect of works by virtue of paragraphs 31 to 34 shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months earlier so as to confer on the specified undertaker any financial benefit by deferment of the time for renewal of the apparatus

or of the system of which it forms part in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June 1992, as revised and re-issued from time to time.

36. Paragraphs 31 to 35 shall not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the construction of works under this Schedule shall be determined in accordance with section 85 of that Act (sharing the costs of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by DLRL and the specified undertaker in such proportions as may be prescribed by any such regulations.

37. In any case where work is carried out by DLRL pursuant to paragraphs 13 to 15 and, if such work had been carried out by the specified undertaker, the repayment made to the specified undertaker under paragraph 31 would fall to be reduced pursuant to paragraphs 33 to 35, the specified undertaker shall pay to DLRL such sum as represents the amount of that reduction.

Indemnity

38. If by reason or in consequence of the construction, maintenance or failure of any of the authorised works, including any works carried out by DLRL pursuant to paragraph 13 or protective works required by a condition imposed under paragraph 22(a) or required under paragraph 24(b), or any subsidence resulting from any of those works, any damage shall be caused 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 other property of the specified undertaker, or there is any interruption in any service provided by the specified undertaker, DLRL shall repay the cost reasonably incurred by the specified undertaker in making good such damage, or restoring the service, and shall—

- (a) make reasonable compensation to the specified undertaker for any loss sustained by it; and
- (b) indemnify the specified undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or incurred by, the specified undertaker,

by reason or in consequence of any such damage or interruption and the fact that any act or thing may have been done by the specified undertaker on behalf of DLRL or in accordance with plans approved by the specified undertaker or in accordance with any requirement of the specified undertaker or under its supervision shall not, subject to paragraph 39, excuse DLRL from any liability under the provisions of this paragraph.

39. Nothing in paragraph 38 shall impose any liability on DLRL with respect to any damage or interruption to the extent that such damage or interruption is attributable to the neglect or default of the specified undertaker, its officers, servants, contractors or other agents.

40. The specified undertaker shall give to DLRL reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of DLRL which shall not be unreasonably withheld.

Exercise of protective and survey powers

41. DLRL shall, so far as is reasonably practicable, so exercise the powers conferred by article 16 (protective works to buildings) as not to obstruct or render less convenient the access to any apparatus.

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42. DLRL shall not, in the exercise of the powers conferred by section 11(3) of the 1965 Act, as applied by this Order, or of article 18 (power to survey and investigate land, etc.), make any trial holes which interfere with any apparatus without the consent of the specified undertaker (which shall not be unreasonably withheld).

Arbitration

43. Any difference arising between DLRL and a specified undertaker under this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration in accordance with article 47 (arbitration).