

## SCHEDULE 8

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR PROTECTION OF SPECIFIED UNDERTAKERS

1.—(1) For the protection of the specified undertakers the provisions of this Part of this Schedule shall, except in so far as otherwise agreed in writing between Network Rail and any specified undertaker, have effect.

(2) The provisions of Schedule 7 (provisions relating to statutory undertakers) shall not apply in relation to apparatus to which this Schedule applies.

(3) Nothing in this Part of this Schedule shall affect the operation of any enactment or agreement in force or entered into before the date on which this Order is made and regulating the relations between Network Rail and a specified undertaker in respect of any apparatus laid or erected in land belonging to Network Rail.

#### *Interpretation*

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable a specified undertaker to fulfil its statutory or licensed functions as effectively as is achievable using the apparatus which the alternative apparatus is to replace;

“apparatus” means—

- (a) in the case of a specified undertaker which is an electricity undertaker, electric lines or electrical plant (both 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 or other apparatus belonging to, or maintained by, a gas transporter within the meaning of Part 1 of the Gas Act 1986(2), for the purposes of gas supply;
- (c) in the case of a specified undertaker which is a water undertaker, mains, pipes or other apparatus belonging to, or maintained by the undertaker for the purposes of water supply; 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 (Scotland) Act 2002(3); and
  - (ii) any sewer which is so vested,

(not being apparatus in respect of which the relations between Network Rail and the undertakers are regulated by the provisions of Part 4 of the 1991 Act) and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“notice” means notice in writing; and

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(1) 1989 c.29, for the definitions of “electric line” and “electrical plant” see section 64 of that Act. The definition of “electrical plant” was amended by the Utilities Act 2000 (c.27), Schedule 6, Part 2, paragraph 38(3).  
(2) 1986 c.44.  
(3) 2002 asp 3.

“specified undertaker” means—

- (a) National Grid Gas plc (company no. 02006000) whose registered office is at 1-3 Strand, London WC2N 5EH;
- (b) Scotia Gas Networks PLC (company no. 04958135) whose registered office is at St Lawrence House, Station Approach, Horley, Surrey RH6 9HJ;
- (c) SP Power Systems Limited (company no. SC215841) whose registered office is at 1 Atlantic Quay, Robertson Street, Glasgow, Lanarkshire G2 8SP; and
- (d) Scottish Water Limited (company no. SC207004) whose registered office is at Castle House, 6 Castle Drive, Carnegie Campus, Dunfermline, Fife KY11 8GG,

or any person succeeding any such company as a licence holder within the meaning of Part 1 of the Electricity Act 1989<sup>(4)</sup>, a gas transporter within the meaning of Part 1 of the Gas Act 1986, a water undertaker within the meaning of the Water Industry (Scotland) Act 2002 or as a sewerage undertaker within the meaning 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.

#### *Acquisition of apparatus*

3. Notwithstanding any provision of this Order Network Rail shall not acquire any apparatus other than by agreement.

#### *Removal of apparatus*

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

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

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

(4) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the specified undertaker and Network Rail or in default of agreement settled by arbitration.

(5) The specified undertaker shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration, and after the grant to the specified undertaker of any such

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(4) For the definition of “licence holder” see section 64 of that Act.

facilities and rights as are referred to in sub-paragraph (2) or (3), proceed with all reasonable despatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by Network Rail to be removed under the provisions of this Part of this Schedule.

(6) Notwithstanding anything in sub-paragraph (5), if Network Rail gives notice to the specified undertaker that it desires itself to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of Network Rail, that work, instead of being executed by the specified undertaker, shall be executed by Network Rail with all reasonable despatch under the superintendence, if given, and to the reasonable satisfaction of the specified undertaker.

(7) Nothing in sub-paragraph (6) shall authorise Network Rail to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within 300 millimetres of the apparatus.

#### *Alternative apparatus*

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

(2) In settling those terms and conditions in respect of the alternative apparatus to be constructed in or along any railway of Network Rail, the arbiter shall—

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation 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 proposed works of Network Rail or the operation of its railway undertaking; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to, if any, the terms and conditions applicable to the apparatus constructed in or along the railway for which the alternative apparatus is to be substituted.

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

#### *Construction of authorised works*

6.—(1) Not less than 28 days before commencing the construction of any work of the type referred to in paragraph 4(2) that is near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 4(2), Network Rail shall submit to the specified undertaker a plan, section and description of the work to be constructed.

(2) Any such work shall be constructed only in accordance with the plan, section and description as submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made by the specified undertaker in accordance with sub-paragraph (3) for the alteration or otherwise for the protection of the apparatus, or for securing access to the apparatus, and the specified undertaker shall be entitled by its officer to watch and inspect the construction of that work.

(3) Any requirements made by the specified undertaker under sub-paragraph (2) shall be made within a period of 14 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If a specified undertaker, in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives notice to Network Rail 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 specified undertaker under paragraph 4(2).

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

(6) Network Rail shall not be required to comply with sub-paragraphs (1) and (2) in a case of emergency but, in that case, it shall give notice to the specified undertaker as soon as is reasonably practicable, and shall provide a plan of the works so soon as reasonably practicable thereafter, and shall comply with those sub-paragraphs so far as is reasonably practicable in the circumstances.

#### *Removal, etc. expenses*

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

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

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

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

and the placing of apparatus of that type or capacity or those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this paragraph would be payable to the specified undertaker by virtue of sub-paragraph (1), shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to a specified undertaker in respect of works by virtue of sub-paragraph (1) 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 in the normal course, be reduced by the amount which represents that benefit—

- (a) as calculated in accordance with any code of practice relating to necessary measures where apparatus is affected by or diverted to accommodate major works that has been approved under section 143(2) of the 1991 Act (measures necessary where apparatus affected by major works); or
- (b) if no such code of practice is in force, as agreed between Network Rail and the specified undertaker or (in the absence of agreement) determined by arbitration.

#### *Apparatus in stopped up road*

**8.—**(1) If Waverley Steps is stopped up under article 8 (permanent stopping up of road), any specified undertaker whose apparatus is in Waverley Steps shall have the same powers and rights in respect of that apparatus, subject to the provisions of this Part of this Schedule, as it enjoyed immediately before the stopping up, and Network Rail shall grant to the specified undertaker servitudes reasonably satisfactory to the specified undertaker in respect of the apparatus and access to it, but nothing in this paragraph shall affect any right of Network Rail or of the specified undertaker to require the removal of the apparatus under paragraph 4(2) or 6(4) or the power of Network Rail to carry out works under paragraphs 4 and 6.

(2) Network Rail shall give to any specified undertaker whose apparatus is in Waverley Steps not less than 28 days' notice of its intention to stop up Waverley Steps under article 8.

#### *Apparatus in temporarily stopped up road*

**9.** Notwithstanding the temporary stopping up or diversion of any road under article 10 (temporary stopping up, etc., of roads), any specified undertaker may do anything in the road which is reasonably necessary to enable that undertaker to inspect, repair, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in the road.

#### *Programming of works*

**10.** Where in consequence of the proposed construction of any of the authorised works, Network Rail or a specified undertaker requires the removal of apparatus under paragraph 4(2) or 6(4) or makes requirements for the protection or alteration of apparatus under paragraph 5, Network Rail shall use its reasonable 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 Network Rail for that purpose.

#### *Indemnity*

**11.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the works referred to in paragraph 4(2), any damage is 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 a specified undertaker, or there is any interruption in any service provided by the specified undertaker, Network Rail shall—

- (a) repay the cost reasonably incurred by the specified undertaker in making good such damage, or restoring the supply, and

- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs sustained or incurred by it,

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

(2) Nothing in sub-paragraph (1) shall impose any liability on Network Rail 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.

(3) A specified undertaker shall give Network Rail reasonable notice of any claim or demand described in sub-paragraph (1) and no settlement or compromise shall be made without the prior consent of Network Rail (not to be unreasonably withheld) which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

#### *Exercise of safeguarding and survey powers*

**12.** Network Rail shall, so far as is reasonably practicable, so exercise the powers conferred by article 12 (safeguarding) as not to obstruct or render less convenient the access to any apparatus.

**13.** Network Rail shall not, in the exercise of the powers conferred by article 13 (survey), make any trial holes which interfere with any apparatus without the consent of the specified undertaker (which shall not be unreasonably withheld).

**14.** Any notice given under this Part of this Schedule shall be in writing and may be served in any of the ways provided by section 20 of the 2007 Act.

#### *Arbitration*

**15.** Any difference arising between Network Rail and a specified undertaker under this Part of this Schedule (other than a difference as to its meaning or construction) shall be determined by arbitration and in determining any difference under this Part of this Schedule the arbiter may require Network Rail to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with the use of any apparatus.