

SCHEDULES

SCHEDULE 10

PROTECTIVE PROVISIONS IN RESPECT OF CERTAIN UNDERTAKINGS

PART I

PROVISIONS APPLYING GENERALLY

General provisions protecting undertakings

1.—(1) Nothing in this Order conferring power on a relevant undertaker to carry out any works shall confer power to do anything, except with the consent of the persons carrying on an undertaking protected by this paragraph, which, whether directly or indirectly, so interferes or will so interfere—

- (a) with works or property vested in or under the control of the persons carrying on that undertaking, in their capacity as such; or
- (b) with the use of any such works or property,

as to affect injuriously those works or that property or the carrying on of that undertaking.

(2) A consent for the purposes of sub-paragraph (1) may be given subject to reasonable conditions but shall not be unreasonably withheld.

(3) Subject to the following provisions of this Schedule, any dispute—

- (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in sub-paragraph (1);
- (b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or
- (c) as to whether any condition subject to which any such consent has been given was reasonable,

shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(4) The following are the undertakings protected by this paragraph—

- (a) the undertaking of the Civil Aviation Authority;
- (b) the undertaking of any relevant undertaker;
- (c) the undertaking of a universal postal provider within the meaning of the Postal Services Act 2000 (c. 26);
- (d) any undertaking consisting in the provision of an electronic communications network;
- (e) any airport to which Article 25 of the [Airports \(Northern Ireland\) Order 1994 \(NI 1\)](#) applies;
- (f) the undertaking of any person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000 (c. 38);

- (g) the undertaking of any person holding a licence under Article 8 of the Gas (NI) Order 1986 (NI 2) or Article 10 of the [Electricity \(Northern Ireland\) Order 1992 \(NI 1\)](#);
- (h) the undertaking of any navigation authority or harbour authority;
- (i) the undertaking of DARD in connection with its functions under the Drainage Order and the Lough Neagh Drainage Acts (Northern Ireland) 1955 and 1970;
- (j) any railway undertaking.

Protection for statutory powers and jurisdiction

2. Nothing in any provision of this Order conferring power on a relevant undertaker to carry out any works shall confer power to do anything which prejudices the exercise of any statutory power, authority or jurisdiction from time to time vested in or exercisable by any persons carrying on an undertaking protected by paragraph 1.

Special protection for certain undertakings in respect of street works

3.—(1) Subject to the following provisions of this paragraph and without prejudice to the other provisions of this Schedule, the powers under Articles 219, 222 and 223 to break up or open a street shall not be exercisable where the street, not being a road—

- (a) is under the control or management of, or is maintainable by, a railway undertaking or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertaking or to such an authority or to any other person,

except with the consent of the undertaking or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Sub-paragraph (1) shall not apply to any exercise of the powers mentioned there for the carrying out of emergency works, within the meaning of Article 6 of the [Street Works \(Northern Ireland\) Order 1995 \(NI 19\)](#).

(3) A consent given for the purposes of sub-paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) Any dispute—

- (a) as to whether a consent for the purposes of sub-paragraph (1) should be given or withheld; or
- (b) as to whether the conditions to which any such consent is made subject are reasonable,

shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(5) If any relevant undertaker contravenes, without reasonable excuse, the requirements of sub-paragraph (1), it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Protection for telecommunication systems

4. Paragraph 23 of Schedule 2 to the Telecommunications Act 1984 (c. 12) (which provides a procedure for certain cases where works involve the alteration of electronic communications apparatus) shall apply to every relevant undertaker for the purposes of any works carried out by that undertaker in exercise of any of the powers conferred by any statutory provision.