

SCHEDULES

SCHEDULE 15

PROTECTIVE PROVISIONS

PART II

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the nominated undertaker and the undertakers concerned, have effect.
- (2) In this Part of this Schedule—
- “alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their functions as effectively as is achievable using the apparatus which the alternative apparatus is to replace;
- “apparatus” means—
- (a) in the case of electricity undertakers, electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to, or maintained by, such undertakers;
 - (b) in the case of gas undertakers, mains, pipes or other apparatus belonging to, or maintained by, a public gas transporter for the purposes of gas supply;
 - (c) in the case of water undertakers, mains, pipes or other apparatus belonging to, or maintained by, such undertakers for the purposes of water supply; and
 - (d) in the case of sewerage undertakers, any sewer, drain or works vested in a sewerage undertaker under the Water Industry Act 1991 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;
- (not being, except in paragraph 17 below, apparatus in respect of which the relations between the nominated undertaker and the undertakers are regulated by the provisions of Part III of the New Roads and Street Works Act 1991) and includes any structure for the lodging therein of apparatus or for giving access to 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;
- “functions” includes powers and duties;
- “in” in a context referring to apparatus in land includes under, over, across, along or upon land;
- “plans” includes sections and method statements;

Status: This is the original version (as it was originally enacted).

“service obligations” means any service obligation imposed on the undertakers by or under the enactments authorising them to carry on their respective undertakings; and

“undertakers” means any of the following, namely, a licence holder within the meaning of Part I of the Electricity Act 1989, a public gas supplier within the meaning of Part I of the Gas Act 1986, a water undertaker within the meaning of the Water Industry Act 1991, a sewerage undertaker within Part I of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act; and, in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained.

- 2 (1) The following provisions of this paragraph have effect in any case where the Secretary of State or the nominated undertaker, in exercise of the powers of Part I of this Act, acquires any interest in or temporarily occupies any land in which apparatus is placed.
- (2) Unless a certificate is issued by the appropriate Ministers under sub-paragraph (3) below the apparatus shall not be removed under this Part of this Schedule, and any right of the undertakers to maintain, repair, renew, adjust, alter or inspect the apparatus in that land shall not be extinguished—
- (a) in the case of a right to adjust or alter apparatus, until 28 days after the nominated undertaker has given the undertakers in whom the right is vested a preliminary notice under paragraph 4 below in respect of land to which the right relates, or, if earlier, the date on which the nominated undertaker commences any work on that land, and
- (b) in any other case, until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers.
- (3) Where the appropriate Ministers certify in relation to any apparatus that—
- (a) failure to remove the apparatus would cause undue delay to the construction of the scheduled works, and
- (b) the removal of the apparatus before the provision of alternative apparatus in accordance with this paragraph would not substantially prejudice the ability of the undertakers to meet any relevant service obligations,
- that apparatus may be removed (or required by the nominated undertaker to be removed) under this Part of this Schedule before any necessary alternative apparatus has been constructed or is in operation to the reasonable satisfaction of the undertakers.
- (4) In this paragraph “appropriate Ministers” means the Secretary of State for Transport acting jointly with either the Secretary of State for the Environment or the Secretary of State for Trade and Industry.
- 3 (1) Before exercising any right to adjust or alter apparatus pursuant to paragraph 2(2) above the undertakers concerned shall give the nominated undertaker not less than 28 days' written notice of the proposed alteration or adjustment, together with plans and specifications.
- (2) Any altered or adjusted apparatus shall be constructed in such line or situation, at such depth and in accordance with such specification as the nominated undertaker may reasonably require for the purpose of securing that (so far as reasonably practicable at the time the requirement is imposed) the apparatus as altered or adjusted will accommodate any work authorised by Part I of this Act.

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

- (3) Such apparatus shall be constructed in such manner, and in accordance with such programme, as is agreed between the undertakers and the nominated undertaker with a view to securing, among other things—
 - (a) the efficient implementation of the necessary work,
 - (b) the avoidance of delay or any other adverse effect on the programme for any works to be carried out by the nominated undertaker under Part I of this Act, and
 - (c) the continued fulfilment by the undertakers of their service obligations to a standard no less than that achieved prior to the making of the alteration or adjustment.
 - (4) If under sub-paragraph (2) above the nominated undertaker requires the altered or adjusted apparatus to be constructed in land other than that in which the undertakers have a right to construct it, paragraph 6(2) and (3) below shall apply to the provision of the requisite facilities and rights as if the apparatus were alternative apparatus.
 - (5) If any requirement made by the nominated undertaker under sub-paragraph (2) above involves cost in the construction of works under this paragraph exceeding that which would have been involved had the apparatus been altered or adjusted as proposed by the undertakers, and in the absence of the undertakers' proposals the nominated undertaker would have required the removal of the apparatus, the nominated undertaker shall repay to the undertakers the amount of the excess.
- 4 The nominated undertaker shall give the undertakers not less than 28 days' written preliminary notice of the nominated undertaker's intention to give notice under paragraph 6(1)(a) below in respect of apparatus in any land.
- 5 (1) If the undertakers desire to alter or adjust any apparatus which has not been the subject of a notice under paragraph 6(1)(a) below after the extinguishment of their right to do so, they shall (except in the case of works of repair or renewal required in an emergency) submit to the nominated undertaker plans and specifications of the proposed work and such further particulars as the nominated undertaker may reasonably require.
- (2) Any work in respect of which the undertakers are subject to an obligation under sub-paragraph (1) above shall not be constructed except in accordance with such plans as may be approved in writing by the nominated undertaker.
 - (3) Any approval of the nominated undertaker required under this paragraph—
 - (a) shall be deemed to have been given if it is neither given nor refused within 28 days of the submission of the plans for approval, and
 - (b) may be given subject to such requirements as the nominated undertaker may make for the purpose of securing that the work does not interfere with the construction or operation of any work authorised by Part I of this Act or for the protection of any such work.
 - (4) The requirements which the nominated undertaker may make under sub-paragraph (3) above include requirements as to the construction of protective works and the person by whom the works are to be constructed.
 - (5) Any work constructed under this paragraph shall be constructed with all reasonable despatch under the superintendence (if given) and to the reasonable satisfaction of the nominated undertaker.
- 6 (1) This paragraph applies where—

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

- (a) the nominated undertaker for the purpose of constructing any work authorised by Part I of this Act in, on or under any land, requires the removal of any apparatus placed in that land, and gives the undertakers not less than 28 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 of any of the powers of Part I of this Act, the undertakers reasonably require to remove any apparatus.
- (2) Subject to sub-paragraph (3) below, the nominated undertaker or the Secretary of State shall afford the undertakers the requisite facilities and rights 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 the nominated undertaker for the purposes of its undertaking under this Act or held by the Secretary of State, or in which either of them has sufficient rights or interests and thereafter for the maintenance, repair, renewal and inspection of such apparatus.
- (3) Sub-paragraph (4) below applies where facilities and rights required for the construction of apparatus under sub-paragraph (2) above are to be afforded elsewhere than in such other land and neither the nominated undertaker nor the Secretary of State is able to afford such facilities and rights.
- (4) The undertakers shall, on receipt of a written notice from the nominated undertaker that this sub-paragraph applies, forthwith use their best endeavours to obtain the necessary facilities and rights; and neither the nominated undertaker nor the Secretary of State shall be under an obligation as to the provision of such facilities and rights in the other land.
- (5) The obligation imposed by sub-paragraph (4) above shall not extend to the exercise by the undertakers of any power to acquire by way of compulsory purchase order any land or rights in land, other than any power which may be exercisable by them under paragraph 10 of Schedule 4 to this Act.
- 7 (1) Any alternative apparatus to be constructed by the undertakers in pursuance of paragraph 6 above in land held or used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act or held by the Secretary of State, or in which the undertakers have obtained the necessary facilities and rights, shall be constructed in such manner, and in such line or situation and in accordance with such programme, as is agreed between the undertakers and the nominated undertaker with a view to securing, among other things, the efficient implementation of the necessary work, the avoidance of unnecessary delay and the continued fulfilment by the undertakers of their service obligations to a standard no less than that achieved prior to the removal of the apparatus which the alternative apparatus replaces, or, in default of agreement, determined by arbitration under paragraph 18 below.
- (2) If the undertakers fail to comply with an agreement made under sub-paragraph (1) above, or with the decision of an arbitrator under paragraph 18 below, they shall be liable to compensate the nominated undertaker in respect of any loss or damage (other than loss of, or arising from delayed receipt of, operating revenue due to delayed opening of the rail link) directly resulting from the failure.
- 8 The undertakers shall, after the manner of construction and the line and situation of any necessary alternative apparatus have been agreed or determined as aforesaid, and after the grant to or obtaining by the undertakers of any such facilities and

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

rights as are referred to in paragraph 6 above, proceed with all reasonable despatch to construct and bring into operation the alternative apparatus and to remove any apparatus required by the nominated undertaker to be removed under the provisions of this Part of this Schedule and, in default, the nominated undertaker may remove that apparatus.

- 9 (1) If the nominated undertaker gives notice in writing to the undertakers that it desires to carry out any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as is or will be situate in any lands held or used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act or held by the Secretary of State, such work, instead of being carried out by the undertakers, shall be carried out by the nominated undertaker in accordance with plans and specifications and in a position agreed between the undertakers and the nominated undertaker, or, in default of agreement, determined by arbitration under paragraph 18 below, with all reasonable despatch under the superintendence (if given) and to the reasonable satisfaction of the undertakers.
- (2) Nothing in this paragraph shall authorise the nominated undertaker to carry out any connection to or disconnection of any existing apparatus.
- 10 (1) Where, in accordance with the provisions of this Part of this Schedule, the nominated undertaker or the Secretary of State affords to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection on land held or used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act or held by the Secretary of State of alternative apparatus, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the nominated undertaker or, as the case may be, the Secretary of State, and the undertakers or, in default of agreement, determined by arbitration under paragraph 18 below.
- (2) In determining such terms and conditions as aforesaid in respect of alternative apparatus to be constructed across or along any works authorised by Part I of this Act the arbitrator shall—
- (a) give effect to all reasonable requirements of the nominated undertaker for ensuring the safety and efficient operation of those works and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the nominated undertaker or the use of the same, and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the case, give effect to the terms and conditions (if any) applicable to the apparatus for which the alternative apparatus is to be substituted and have regard to the undertakers' ability to fulfil their service obligations.
- (3) If the facilities and rights to be afforded by the nominated undertaker or the Secretary of State in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted are, in the opinion of the arbitrator, more or less favourable on the whole to the undertakers than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbitrator shall make such provision for the payment of compensation to or by the nominated undertaker or the Secretary of State to or by the undertakers in respect thereof as appears to him to be reasonable having regard to all the circumstances of the case.
- 11 (1) Not less than 28 days before commencing to construct any work authorised by Part I of this Act which is near to, or will or may affect, any apparatus the removal of

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

which has not been required by the nominated undertaker under paragraph 6 above, the nominated undertaker shall submit to the undertakers a plan and description of the work and of any protective measures which the nominated undertaker proposes to take in respect of that apparatus, together with a specification of such measures where appropriate.

- (2) The work shall be constructed only in accordance with the plan and description submitted as aforesaid and in accordance with such reasonable requirements as may be made by the undertakers for the alteration or otherwise for the protection of the apparatus or for securing access thereto, and the undertakers shall be entitled by their officer to watch and inspect the construction of the work.
 - (3) If the undertakers within 14 days after the submission to them of any such plan and description shall, in consequence of the works proposed by the nominated undertaker, reasonably require the removal of any apparatus and give written notice to the nominated undertaker of that requirement, this Part of this Schedule shall have effect as if the removal of such apparatus had been required by the nominated undertaker under paragraph 6 above.
 - (4) Nothing in sub-paragraphs (1) to (3) above shall preclude the nominated undertaker from submitting at any time, or from time to time, but in no case less than 28 days before commencing the construction of the work, a new plan and description thereof in lieu of the plan and description previously submitted, and thereupon the provisions of those sub-paragraphs shall apply to and in respect of the new plan and description.
 - (5) The nominated undertaker shall not be required to comply with sub-paragraphs (1) to (3) above in a case of emergency but in such a case it shall give notice to the undertakers as soon as reasonably practicable and a plan and description of those works as soon as reasonably practicable thereafter, and shall comply with those sub-paragraphs so far as reasonably practicable in the circumstances.
- 12 If in consequence of the exercise of the powers of Part I of this Act the access to any apparatus is materially obstructed the nominated undertaker shall, so far as reasonably practicable, provide alternative means of access to such apparatus which is no less convenient than the access enjoyed by the undertakers prior to the obstruction.
- 13 Where, in consequence of Part I of this Act, any part of any highway in which any apparatus is situate ceases to be part of a highway, the undertakers may exercise the same rights of access to such apparatus as they enjoyed immediately before the passing of Part I of this Act, but nothing in this paragraph shall affect any right of the nominated undertaker or of the undertakers to require removal of that apparatus under this Part of this Schedule or the power of the nominated undertaker to construct works in accordance with paragraph 11 above.
- 14 (1) Subject to the following provisions of this paragraph, the nominated undertaker shall repay to the undertakers the reasonable expenses incurred by the undertakers in, or in connection with—
- (a) the removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Part of this Schedule,
 - (b) the cutting off of any apparatus from any other apparatus in consequence of the exercise by the nominated undertaker of any power under Part I of this Act, and

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

- (c) any other work or thing rendered reasonably necessary in consequence of the exercise by the nominated undertaker of any such power.
 - (2) There shall be deducted from any sum payable under sub-paragraph (1) above 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) 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 the nominated undertaker or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction of works under paragraph 6 above 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 sub-paragraph would be payable to the undertakers by virtue of sub-paragraph (1) above shall be reduced by the amount of that excess.
 - (4) For the purposes of sub-paragraph (3) above—
 - (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 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 the undertakers in respect of works by virtue of this paragraph shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7½ years earlier so as to confer on the undertakers 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.
 - (6) In any case where work is carried out by the nominated undertaker pursuant to paragraph 9 above and, if such work had been carried out by the undertakers, the repayment made to the undertakers under this paragraph would fall to be reduced pursuant to sub-paragraphs (3) to (5) above, the undertakers shall pay to the nominated undertaker such sum as represents the amount of that reduction.
- 15 (1) Subject to sub-paragraphs (2) and (3) below, if by reason or in consequence of the construction of any of the works authorised by Part I of this Act, or any subsidence resulting from any of those works, 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 property of the undertakers, or there is any interruption in any service provided, or in the supply of any goods, by any of the undertakers, the nominated undertaker shall bear and pay the cost reasonably

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

incurred by the undertakers in making good such damage or restoring the supply and shall—

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

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

- (2) Nothing in sub-paragraph (1) above shall impose any liability on the nominated undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the undertakers, their officers, servants, contractors or agents.
 - (3) The undertakers shall give the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the nominated undertaker 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.
- 16 The nominated undertaker shall, so far as is reasonably practicable, so exercise its powers under paragraphs 6 and 7 of Schedule 2 to this Act as not to obstruct or render less convenient the access to any apparatus.
- 17 Notwithstanding the temporary stopping up or diversion of any highway under paragraph 6 of Schedule 3 to this Act, the undertakers may do all such works and things in any such highway as may be reasonably necessary to enable them to inspect, repair, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in that highway.
- 18 (1) Any dispute arising between the nominated undertaker and the undertakers under this Part of this Schedule (other than a dispute under paragraph 5(1) to (4) above) shall be determined by an arbitrator who shall be appointed by agreement between the parties or, in default of such agreement, shall be the Secretary of State.
- (2) In determining any such dispute the arbitrator may, if he thinks fit, require the nominated undertaker to construct any temporary or other works so as to avoid, so far as reasonably possible, interference with the use of any apparatus.