

SCHEDULES

SCHEDULE 5

PROTECTIVE PROVISIONS

Part I

Protection for electricity, gas and water undertakers

4.—(1) If, in the exercise of the powers of this Order, Railtrack acquire 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 an 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 undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, Railtrack require the removal of any apparatus placed in that land, they shall give to the undertaker in question written 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 of this Order an undertaker reasonably needs to remove any of its apparatus) Railtrack shall, subject to sub-paragraph (3) below, afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of Railtrack 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 Railtrack, or Railtrack are unable to afford such facilities and rights as are mentioned in sub-paragraph (2) above, in the land in which the alternative apparatus or part of such apparatus is to be constructed, the undertaker in question shall, on receipt of a written notice to that effect from Railtrack, 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 Railtrack under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and Railtrack or in default of agreement settled by arbitration pursuant to article 31.

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 31 above, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3) above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by Railtrack to be removed under the provisions of this Part of this Schedule.

(6) Notwithstanding anything in sub-paragraph (5) above, if Railtrack give notice in writing to the undertaker in question that they desire themselves 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 Railtrack, that work, in lieu of

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being executed by the undertaker, shall be executed by Railtrack with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) above shall authorise Railtrack 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.