

SCHEDULES

SCHEDULE 10

PROTECTIVE PROVISIONS

PART I

Protection for electricity, gas and water undertakers

1.—(1) For the protection of the several undertakers referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the Company and the undertakers concerned, have effect.

(2) In this Part of this Schedule—

“adequate alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of electricity undertakers, electric lines or electrical plant (as defined in the Electricity Act 1989(1)) belonging to or maintained by such undertakers;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a public gas transporter for the purposes of gas supply; and
- (c) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply;

(not being, except in paragraph 2 below, apparatus in respect of which the relations between the Company and the undertakers are regulated by the provisions of Part III of the 1991 Act) and includes any structure for the lodging within that structure of apparatus or any structure required for giving access to apparatus;

“functions” includes powers and duties;

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

“plan” includes sections and method statements; and

“undertakers” means any person authorised to carry on, in any area within which the Company is by this Order authorised to purchase land or execute works, an undertaking for the transportation or storage of gas, the supply of water or for the generation, transmission or supply of electricity; and, in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained.

(3) The provisions of Schedule 9 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

2. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 8 of this Order, the undertakers shall be at liberty at all times to execute and do all such works

(1) 1989 c. 29.

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and things in, upon or under any such highway as may be reasonably necessary or desirable to enable them to maintain, renew or use any apparatus which at the time of the stopping up or diversion was in that highway.

3.—(1) The Company, in the case of the powers conferred by article 15 of this Order, shall, so far as is reasonably practicable, so exercise those powers as not to obstruct or render less convenient the access to any apparatus. If by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the undertakers or any interruption in the supply of electricity, gas or water, as the case may be, by the undertakers is caused, the Company shall bear and pay the costs reasonably incurred by the undertakers in making good such damage or restoring the supply; and, subject to sub-paragraph (2) below, shall—

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

by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on the Company with respect to any damage or interruption to the extent that such damage or interruption may be attributable to the act, neglect or default of the undertakers or their contractors or workmen; and the undertakers shall give to the Company reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Company.

4. Notwithstanding anything in this Order or shown on the deposited plans the Company shall not acquire any apparatus under the powers of this Order otherwise than by agreement.

5.—(1) If the Company, in the exercise of the powers of this Order, 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 the undertakers to maintain or renew that apparatus in that land shall not be extinguished until adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers.

(2) If the Company, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, requires the removal of any apparatus placed in that land, it shall give to the undertakers written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed so as to provide adequate alternative apparatus in place of the apparatus to be removed, and in that case (or if in consequence of the exercise of any of the powers of this Order the undertakers reasonably require to remove any apparatus) the Company shall, subject to sub-paragraph (3) below, afford to the undertakers the necessary facilities and rights for the construction of the alternative apparatus in other land of the Company and thereafter for the maintenance and renewal of that apparatus.

(3) If the alternative apparatus or any part of it is to be constructed elsewhere than in other land of the Company, or the Company is unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or part of it is to be constructed, the undertakers shall, on receipt of a written notice to that effect from the Company, forthwith use all reasonable endeavours to obtain the necessary facilities and rights in that last-mentioned land.

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

(5) The undertakers shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as aforesaid and after the grant to the undertakers 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 the Company to be removed under the provisions of this Part of this Schedule.

(6) Notwithstanding anything in sub-paragraph (5) above, if the Company gives notice in writing to the undertakers 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 the Company, that work, instead of being executed by the undertakers, may with the prior written consent of the undertakers (which shall not be unreasonably withheld and shall be subject to any such conditions as are reasonable and proper to protect the apparatus) be executed by the Company with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertakers.

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

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Company affords to the undertakers facilities and rights for the construction, maintenance or renewal in land of the Company 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 the Company and the undertakers or in default of agreement settled by arbitration in accordance with sub-paragraphs (2) and (3) below.

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

- (a) give effect to all reasonable requirements of the Company for ensuring the safe and efficient operation of the railway 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 Company or the traffic on the railway; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular 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 obligation.

(3) If the facilities and rights to be afforded by the Company 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 less favourable on the whole to the undertakers than the facilities and rights enjoyed by them in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator shall make such provision for the payment of compensation by the Company to the undertakers in respect thereof as appears to him to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before commencing to execute any works that are referred to in paragraph 5(2) above and are near to or will or may affect any apparatus the removal of which has not been required by the Company under paragraph 5(2), the Company shall submit to the undertakers a plan, section and description of the works to be executed.

(2) Those works shall be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) below 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 execution of those works.

(3) Any requirements made by the undertakers under paragraph (2) above shall be made within 21 days after the submission to them of a plan, section and description under sub paragraph (1) above.

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(4) If the undertakers within 21 days after the submission to them of a plan, section and description shall, in consequence of the works proposed by the Company, reasonably require the removal of any apparatus and give written notice to the Company of that requirement, the foregoing provisions of this Part of this Schedule shall apply as if the removal of the apparatus had been required by the Company under paragraph 5(2) above.

(5) Nothing in this paragraph shall preclude the Company from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan, section and description thereof in place of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) The Company shall not be required to comply with sub-paragraph (1) above in a case of emergency but in that case it shall give to the undertakers notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (2) above so far as reasonably practicable in the circumstances.

8. Where, by reason of this Order, any part of any highway in which any apparatus is situated 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 making of this Order, but nothing in this paragraph shall affect any right of the Company or of the undertakers to require removal of such apparatus under this Part of this Schedule or the power of the Company to execute works in accordance with paragraph 7 above.

9.—(1) Subject to the following provisions of this paragraph, the Company shall pay to the undertakers the costs, charges and expenses reasonably incurred by the undertakers 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 5(2) above (including the acquisition of any facilities or rights under paragraph 5(3) above), less the value of any apparatus removed under the provisions of this Part of this Schedule (that value being calculated after removal) and shall also make compensation to the undertakers—

- (a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this Part of this Schedule); and
- (b) for any other expenses, loss, damages, penalty or costs incurred by the undertaker;

by reason of the execution, maintenance, user or failure of those works or otherwise by reason of the exercise by the Company of the powers of this Order.

(2) 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 except where this has been solely due to using the nearest currently available type; 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 of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the Company or, in default of agreement, is not determined by arbitration to be necessary, then, if it 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 undertakers by virtue of sub-paragraph (1) above shall be reduced by the amount of that excess.

- (3) For the purposes of sub-paragraph (2) 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; 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.

(4) An amount which apart from this sub-paragraph would be payable to the undertakers in respect of works by virtue of sub-paragraph (1) above (and having regard, where relevant, to sub-paragraph (2) above) 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 undertakers any financial benefit by deferment of the time for renewal of the apparatus 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 (Diversionsary Works)” and dated June 1992 and approved by the Secretary of State on 30 June 1992.

(5) Sub-paragraphs (1) to (4) above shall not apply where the authorised works constitute major transport works for the purposes of Part III of the 1991 Act, but instead—

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

10.—(1) Where, by reason of the stopping up of any highway under the powers of this Order, any apparatus belonging to the undertakers and laid or placed in such highway or elsewhere is rendered derelict or unnecessary, the Company shall, subject to sub-paragraph (2) below, pay to the undertakers the then value of such apparatus (which shall thereupon become the property of the Company) and the reasonable costs of and incidental to the cutting off of such apparatus from any other apparatus, and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason of such apparatus being so rendered derelict or unnecessary.

(2) The Company shall not under the provisions of this paragraph be required to pay to the undertakers the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the undertakers, other apparatus has at the expense of the Company been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary.

11. Any difference arising between the Company and the undertakers under this Part of this Schedule shall be referred to and settled by arbitration under article 44 of this Order.

12. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the Company and the undertakers in respect of any apparatus laid or erected in land belonging to the Company on the coming into force of this Order.