

SCHEDULES

SCHEDULE 10

PROTECTION OF CERTAIN PERSONS

PART 7

PROTECTION OF ELECTRICITY AND GAS UNDERTAKERS

Removal of apparatus: alternative apparatus

79.—(1) If, in the exercise of the powers of this Order, the undertaker 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 company 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 company 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, the undertaker requires the removal of any apparatus placed in that land, it shall give to the company 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 a company reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the company the necessary facilities and rights (including for the avoidance of doubt legal easements satisfactory to the company) for the construction of alternative apparatus in other land of the undertaker and thereafter for the retention and maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker 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 company in question shall, on receipt of a written notice to that effect from the undertaker, 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) The obligations imposed by sub-paragraph (3) shall not extend to the exercise by the company of any power to acquire compulsorily any land or rights in land.

(5) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the company in question and the undertaker or in default of agreement settled by arbitration pursuant to article 54.

(6) The company in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 54, and after the grant to the company of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

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

(8) Nothing in sub-paragraph (7) shall authorise the undertaker to execute the actual 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 600 millimetres of the apparatus where the apparatus is operating or only capable of operating at below 7 bar pressure or within 1,500 millimetres of the apparatus where the apparatus is operating or capable of operating at or in excess of 7 bar pressure.

80.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a company facilities and rights for the construction, and maintenance, in land of the undertaker 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 the undertaker and the company in question or in default of agreement settled by arbitration in accordance with article 54.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the tunnel crossing or adjacent to any other of the authorised works, the arbitrator shall—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the tunnel crossing 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 undertaker or the traffic in the tunnel crossing; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to any terms and conditions applicable to the apparatus for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the undertaker 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 company in question 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 arbitrator shall make such provision for the payment of compensation by the undertaker to that company as appears to him to be reasonable having regard to all the circumstances of the particular case.