

## SCHEDULES

### SCHEDULE 11

Article 64

#### FOR THE PROTECTION OF NATIONAL GRID GAS PLC AND OTHER STATUTORY UNDERTAKERS

##### *Apparatus of statutory undertakers, etc., on land acquired*

1.—(1) Subject to the following provisions of this paragraph, sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers, etc. and power of statutory undertakers, etc. to remove or re-site apparatus) shall apply in relation to any land acquired under this Order, or which is held by the Harbour Authority and is appropriated or used (or about to be used) by it for the purposes of the Order or purposes connected therewith, and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1), any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the Harbour Authority compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) The provisions of the 1990 Act mentioned in sub-paragraph (1), as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which paragraph 2 or Part 3 of the 1991 Act applies.

(5) In this paragraph—

“public communications provider” has the same meaning as in section 151(1) of the Communications Act 2003(1); and

“public utility undertakers” has the same meaning as in the 1980 Act.

##### *Protection for National Grid Gas plc*

2.—(1) For the protection of the undertaker referred to in this Schedule the following provisions shall, unless otherwise agreed in writing between the Harbour Authority and the undertaker, have effect.

(2) In the remaining provisions of this Schedule—

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

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(1) 2003 c. 21.

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“apparatus” means any mains, pipes or other apparatus belonging to or maintained by the undertaker for the purposes of gas supply (not being apparatus in respect of which the relations between the Harbour Authority and the undertaker are regulated by the provisions of Part 3 of the 1991 Act) and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“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 method statements;

“specified work” means any of the authorised works which will or may be situated over, or within 15 metres measured in any direction of, or may in any way adversely affect any apparatus the removal of which has not been required under paragraph 3; and

“the undertaker” means National Grid Gas plc, whose registered office is 1-3 Strand, London WC2N 5EH.

3.—(1) If, in the exercise of any of its powers granted under this Order, the Harbour Authority serves notice on the undertaker that it intends to develop land affecting the apparatus of the undertaker, that apparatus shall not be removed under this Schedule and any right of the undertaker to use, maintain, repair, renew or inspect 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.

(2) If, for the purpose of executing any authorised works in, on or under any land, the Harbour Authority requires the protection, diversion, relocation or removal of any apparatus placed in that land, the Harbour Authority shall give to the undertaker 56 days’ 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 granted under this Order, the undertaker reasonably needs to remove any of its apparatus) the Harbour Authority shall, subject to sub-paragraph (3), afford to the undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the Harbour Authority where the Harbour Authority so directs and thereafter for the use, maintenance, repair, renewal and inspection of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the Harbour Authority, or the Harbour Authority 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 undertaker shall, on receipt of a written notice to that effect from the Harbour Authority, use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Sub-paragraph (3) does not require the undertaker to exercise any power to acquire compulsorily any land or right in the land unless the Harbour Authority has agreed to be liable for the costs of the exercise of the power, and if the Harbour Authority does so agree, it may act as the undertaker’s agent in the exercise of the power.

(5) Any alternative apparatus to be constructed in land of the Harbour Authority under this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker and the Harbour Authority or in default of agreement settled by arbitration in accordance with article 66 (arbitration).

(6) The undertaker shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 66 (arbitration), and after the grant to the undertaker 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 Harbour Authority to be removed under the provisions of this Schedule.

(7) Notwithstanding anything in sub-paragraphs (2) and (6), if the Harbour Authority gives notice in writing to the undertaker that the Harbour Authority desires itself to execute any part of the work necessary in connection with the construction of alternative apparatus, or the removal of the apparatus required to be removed, or the protection of apparatus, that work, in lieu of being executed by the undertaker, shall be executed by the Harbour Authority with the prior written consent of the undertaker (which shall not be unreasonably withheld but which may be subject to any such conditions as are reasonable and proper) in accordance with plans and in a position agreed between the undertaker and the Harbour Authority or, in default of agreement, settled by arbitration in accordance with article 66 (arbitration), with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(8) The Harbour Authority must agree the programme for diversion of the apparatus with the undertaker (who must act reasonably) to ensure that the undertaker can fulfil its operational requirements.

**4.—**(1) Where, in accordance with the provisions of this Schedule, the Harbour Authority affords to the undertaker facilities and rights for the construction, and maintenance, in land of the Harbour Authority 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 Harbour Authority and the undertaker or in default of agreement settled, subject to sub-paragraphs (2) and (3), by arbitration in accordance with article 66 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in any property of the Harbour Authority, the arbitrator shall—

- (a) give effect to all reasonable requirements of the Harbour Authority for ensuring the safe and efficient construction and operation of the authorised 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 Harbour Authority;
- (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 undertaker's ability to fulfil its service obligations; and
- (c) enable all or part of such development as is authorised by this Order (and its subsidiary consents, approvals, permissions and authorities as the case may be) to go ahead without undue delay or unreasonable cost.

(3) If the facilities and rights to be afforded by the Harbour Authority 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 undertaker 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 Harbour Authority to the undertaker as appears to him to be reasonable having regard to all the circumstances of the particular case.

**5.—**(1) Not less than 56 days before commencing the construction or maintenance of any specified work the Harbour Authority shall submit to the undertaker a plan, section and description of the works to be executed.

(2) The Harbour Authority shall not commence the construction or maintenance of any specified work until the undertaker has given written approval of the plan, section and description so submitted.

(3) Any approval of the undertaker required under sub-paragraph (2)—

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- (a) may be given subject to reasonable conditions for the alteration or otherwise for the protection of the apparatus, or for securing access to the apparatus, and the undertaker shall be entitled by its officer to watch and inspect the execution of those works;
- (b) shall not be unreasonably withheld; and
- (c) shall be deemed to have been given if it is neither given nor refused within 28 days of the submission of plans for approval.

(4) If the undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the Harbour Authority, reasonably requires the removal of any apparatus and gives written notice to the Harbour Authority of that requirement, the foregoing provisions of this Schedule shall apply as if the removal of the apparatus had been required by the Harbour Authority under paragraph 3.

(5) Nothing in this paragraph shall preclude the Harbour Authority from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works, a new plan, section and description in lieu of the plan, section and description previously submitted, following which the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) The Harbour Authority shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the undertaker as much prior notice as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable afterwards and shall comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

**6.—**(1) Subject to the following provisions of this paragraph, the Harbour Authority shall repay to the undertaker the reasonable and evidenced expenses incurred by the undertaker in, or in connection with—

- (a) 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 specified works; and
- (b) the provision of any superintendence and consultations and approvals referred to in paragraph 5.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, that value being calculated after removal.

(3) If in pursuance of the provisions 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 on the open market or where it is required by law; 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 Harbour Authority or, in default of agreement, is not determined by arbitration to be necessary, then, if such placing involves cost in the construction of works under 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 sub-paragraph would be payable to the undertaker by virtue of sub-paragraph (1), shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (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 main or pipe 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 sub-paragraph (3) would be payable to the undertaker in respect of works by virtue of sub-paragraph (1) 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 undertaker 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.

7.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works as are referred to in paragraph 3(2), 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 undertaker, or there is any interruption in any service provided, or in the supply of any goods, by the undertaker the Harbour Authority shall—

- (a) bear and pay the cost reasonably incurred and evidenced by the undertaker in making good such damage or restoring the supply; and
- (b) compensate the undertaker for all valid claims, demands, proceedings, costs, damages, losses and expenses which may be made or taken against or recovered from or incurred by the undertaker;

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

(2) Nothing in sub-paragraph (1) shall impose any liability on the Harbour Authority with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the undertaker, its officers, employees, servants, contractors, agents or others acting through it.

(3) The undertaker shall give the Harbour Authority reasonable notice of and full and detailed evidence of any such claim or demand and no settlement or compromise shall be made without the consent of the 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.