

# SCHEDULES

## SCHEDULE 8

Article 33

### PROTECTIVE PROVISIONS

#### PART 1

#### FOR THE PROTECTION OF ELECTRICITY, GAS, OIL, WATER AND SEWERAGE UNDERTAKERS

1. For the protection of the undertakers referred to in this Part of this Schedule the following provisions have effect, unless otherwise agreed in writing between the Secretary of State and the undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(1)), belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter within the meaning of Part 1 of the Gas Act 1986(2) for the purposes of gas supply;
- (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; and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991(3); and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act(4),

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; and

- (e) in the case of Mainline Pipelines Limited, company number 00995545, whose registered office is at 11 Old Jewry, London EC2R 8DU, any oil apparatus,

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(1) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).

(2) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by sections 3(2) and 76 of, and paragraphs 1 and 4 of Schedule 6, and Schedule 8, to, the Utilities Act 2000 (c. 27), sections 149(1) and (5) and 197(9) of, and part 1 of Schedule 23 to, the Energy Act 2004 (c. 20) and S.I. 2011/2704.

(3) 1991 c. 56.

(4) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003. Section 104 was amended by sections 96(4) and 101(2) of, and part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29).

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and includes any structure in which apparatus is or is to be lodged or which gives or will give 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;

“oil apparatus” means any pipe-line, apparatus and works as described in section 65(2) of the Pipe-lines Act 1962<sup>(5)</sup> (meaning of “pipe-line”) and all protective wrappings, sleeves and slabs, together with ancillary cables and markers; and such legal interest, and benefit of property rights and covenants as are vested in Mainline Pipelines Limited in respect of such items;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991;
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991; and
- (e) Mainline Pipelines Limited and its successors in title and function,

for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

#### *On street apparatus*

3. This part of this Schedule does not apply to apparatus in respect of which the relations between the Secretary of State and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

#### *Apparatus in stopped up streets*

4.—(1) Where any street is stopped up under article 11 (permanent stopping up of streets), any undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the Secretary of State must grant to the undertaker legal easements reasonably satisfactory to the undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the Secretary of State or of the undertaker to require the removal of that apparatus under paragraph 7 or the power of the Secretary of State to carry out works under paragraph 9.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 12 (temporary stopping up of streets), an undertaker is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

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(5) 1962 c. 58. Section 65(2) was amended by paragraphs 1 and 6 of Schedule 2 to the Energy Act 2011 (c. 16), S.I. 2000/1937 and S.I. 2011/2305.

### *Protective works to buildings*

5. The Secretary of State, in the case of the powers conferred by article 16 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

### *Acquisition of land*

6. Regardless of any provision in this Order or anything shown on the land plans, the Secretary of State must not acquire any apparatus otherwise than by agreement.

### *Removal of apparatus*

7.—(1) If, in the exercise of the powers conferred by this Order, the Secretary of State acquires any interest in any land in which any apparatus is placed or over which access to any apparatus is enjoyed or requires that the undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of an undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the undertaker in question in accordance with sub-paragraphs (2) to (7).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the Secretary of State requires the removal of any apparatus placed in that land, the Secretary of State must give to the undertaker in question 56 days' 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 and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any of its apparatus) the Secretary of State must, 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 Secretary of State and subsequently 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 the Secretary of State, or the Secretary of State 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—

- (a) in the case of an undertaker other than Mainline Pipelines Limited the undertaker must, on receipt of a written notice to that effect from the Secretary of State, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed; or
- (b) in the case of Mainline Pipelines Limited, the Secretary of State must afford to and, if necessary, acquire for the benefit of Mainline Pipelines Limited the necessary facilities and rights (equivalent to those currently enjoyed by Mainline Pipelines Limited) for the construction, maintenance and use of the alternative apparatus and access to it.

(4) Any alternative apparatus to be constructed in land of the Secretary of State under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Secretary of State or in default of agreement settled by arbitration in accordance with article 36 (arbitration).

(5) The undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 36, and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the Secretary of State to be removed under the provisions of this Part of this Schedule.

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(6) Regardless of anything in sub-paragraph (5), if the Secretary of State gives notice in writing to the undertaker in question that the Secretary of State intends to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the Secretary of State, that work, instead of being executed by the undertaker, must be executed by the Secretary of State without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) authorises the Secretary of State 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—

- (a) 300 millimetres of apparatus other than oil apparatus; and
- (b) 3000 millimetres of oil apparatus.

(8) Sub-paragraphs (6) and (7) apply to Mainline Pipelines Limited and its apparatus only if it fails to comply with its obligations under sub-paragraph (5).

#### *Facilities and rights for alternative apparatus*

**8.—**(1) Where, in accordance with the provisions of this Part of this Schedule, the Secretary of State affords to an undertaker facilities and rights for the construction and maintenance in land of the Secretary of State of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the Secretary of State and the undertaker in question or in default of agreement settled by arbitration in accordance with article 36 (arbitration).

(2) If the facilities and rights to be afforded by 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 less favourable on the whole to the undertaker 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 must make such provision for the payment of compensation by the Secretary of State to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### *Retained apparatus*

**9.—**(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the Secretary of State under paragraph 7(2), the Secretary of State must submit to the undertaker in question a plan of the works to be executed.

(2) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an undertaker under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the Secretary of State, reasonably requires the removal of any apparatus and gives written notice to the Secretary of State of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the Secretary of State under paragraph 7(2).

(5) Nothing in this paragraph precludes the Secretary of State 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 instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The Secretary of State is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any oil apparatus, or (wherever situated) impose any load directly upon any oil apparatus or involve embankment works within 15 metres of any oil apparatus, the plan to be submitted to the undertaker under sub-paragraph (1) must be detailed including a material statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all oil apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

(8) In relation to works which will or may be situated on, over, under or within 30 metres measured in any direction of any electricity apparatus, or involve embankment works within 30 metres of any electricity apparatus, the plan to be submitted to the undertaker under sub-paragraph (1) must be detailed including a material statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

#### *Expenses and costs*

**10.**—(1) Subject to the following provisions of this paragraph, the Secretary of State must repay to an undertaker all expenses reasonably incurred by that undertaker 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 7(2), including any costs reasonably incurred in connection with the acquisition of rights under paragraph 7(3), and in watching and inspecting the execution of works under paragraph 9(2) and in making reasonable requirements under paragraph 9(3).

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

(3) If in accordance with 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; 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 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 Secretary of State or, in default of agreement,

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is not determined by arbitration in accordance with article 36 (arbitration) to be necessary, then, if such placing 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 sub-paragraph would be payable to the undertaker in question by virtue of sub-paragraph (1) is to 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 is not to 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 pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to 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 an undertaker in respect of works by virtue of sub-paragraph (1), 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, is to be reduced by the amount which represents that benefit.

**11.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the authorised development or any such works referred to in paragraphs 5, 7(2), or 9(1), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative 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 an undertaker, or there is any interruption in any service provided or of any access to any apparatus, or in the supply of any goods, by any undertaker, the Secretary of State must—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker,

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

(2) The fact that any act or thing may have been done by an undertaker on behalf of the Secretary of State or in accordance with a plan approved by an undertaker or in accordance with any requirement of an undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the Secretary of State from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the Secretary of State with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

(4) An undertaker must give the Secretary of State reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the Secretary of State who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### *Cooperation*

**12.** Where in consequence of the proposed construction of any of the authorised development, the Secretary of State or an undertaker requires the removal of apparatus under paragraph 7(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 9, the Secretary of State must use best endeavours to co-ordinate the execution of the works in the interests

of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the undertaker's undertaking and each undertaker must use its best endeavours to co-operate with the Secretary of State for that purpose.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the Secretary of State and an undertaker in respect of any apparatus laid or erected in land belonging to the Secretary of State on the date on which this Order is made.

## PART 2

### FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the Secretary of State and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(6);

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A)(7) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(8);

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

16. The exercise of the powers conferred by article 27 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunication Act 1984(9) (undertaker's works).

17.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

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(6) 2003 c. 21.

(7) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003.

(8) See section 106.

(9) 1984 c. 12. Paragraph 23 was amended by section 190 of, and paragraph 68 of Schedule 25 and part 1 of Schedule 27 to, the Water Act 1989 (c. 15), section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and section 106(2) of, and paragraphs 1, 5(d) and 8 of Schedule 3 to, the Communications Act 2003.

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the Secretary of State must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the Secretary of State with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the Secretary of State reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the Secretary of State who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the Secretary of State and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 36 (arbitration).

**18.** This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the Secretary of State and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

**19.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the Secretary of State and an operator in respect of any apparatus laid or erected in land belonging to the Secretary of State on the date on which this Order is made.