

## SCHEDULES

### SCHEDULE 8

#### PROTECTIVE PROVISIONS

#### PART 4

#### PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

##### *Interpretation*

**42.**—(1) The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between LUL and the undertaker concerned.

(2) The provisions of Schedule 7 (provisions relating to statutory undertakers, etc.), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Schedule applies.

**43.** 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 not 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 for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
  - (ii) mains, pipes or other apparatus that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991(2); and
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; 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,

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,

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(1) 1989 c. 29.

(2) 1991 c. 56.

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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, across, along or upon land;

“plans” includes sections, specifications and method statements; and

“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<sup>(3)</sup>;
  - (c) a water undertaker within the meaning of the Water Industry Act 1991; and
  - (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,
- for the area of the authorised works, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

#### *On-street apparatus*

**44.** This Part of this Schedule does not apply to anything done or proposed to be done in relation to or affecting apparatus in respect of which the relations between LUL and the undertaker are regulated by the provisions of Part 3 of the 1991 Act.

#### *Acquisition of land*

**45.—(1)** Regardless of any provision in this Order or anything shown on the deposited plans LUL must not acquire any apparatus other than by agreement with the undertaker.

(2) LUL may, in the exercise of the powers conferred by this Order, acquire or appropriate any interest in any land in which any apparatus is placed and, following the removal of such apparatus in accordance with the provisions of this Part of this Schedule, any rights in that land relating to that apparatus are extinguished, but that apparatus must not be removed under this Part of this Schedule and any right of an undertaker to use, maintain or renew that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

#### *Removal of apparatus*

**46.—(1)** If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, LUL requires the removal of any apparatus placed in that land, it must give to the undertaker in question written notice of that requirement, together with plans 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) LUL 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 LUL and for the subsequent use, maintenance and renewal of that apparatus.

(2) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of LUL, or LUL is unable to afford such facilities and rights as are mentioned in sub-paragraph (1), in the land in which the alternative apparatus or part of such apparatus is to be

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(3) 1986 c. 44.

constructed, the undertaker in question must, on receipt of a written notice to that effect from LUL, as soon as reasonably possible use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(3) The obligation imposed on the undertaker under sub-paragraph (2) does not extend to the exercise by the undertaker of any power to acquire any land or rights in land by compulsory purchase order.

(4) Any alternative apparatus to be constructed in land of LUL under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and LUL or in default of agreement settled by arbitration in accordance with article 48 (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 48 (arbitration), and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraphs (1) or (2), proceed with all reasonable despatch to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by LUL to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if LUL gives notice in writing to the undertaker in question that it desires itself to execute any work to which this sub-paragraph applies, that work, instead of being executed by the undertaker, may be executed by LUL with the prior written consent of the undertaker (which must not be unreasonably withheld or delayed and is to be subject to any such conditions as are reasonable and proper to protect the apparatus) in accordance with plans and in a position agreed between the undertaker and the promoter or, in default of agreement, determined by arbitration, with all reasonable despatch under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) In carrying out any work under sub-paragraph (6) LUL must comply with all statutory obligations which would have been applicable had the works been carried out by the undertaker.

(8) Sub-paragraph (6) applies to any part of any work necessary in connection with construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land of LUL.

(9) Nothing in sub-paragraph (6) authorises LUL 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 600 millimetres of the apparatus.

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

**47.—**(1) Where, in accordance with the provisions of this Part of this Schedule, LUL affords to an undertaker facilities and rights for the construction, use, maintenance and renewal in land of LUL of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between LUL and the undertaker in question or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(2) In settling those terms and conditions in respect of the alternative apparatus to be constructed across or along the authorised works, the arbitrator must—

- (a) give effect to all reasonable requirements of LUL for ensuring the safety and efficient 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 LUL 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 constructed

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across or along the authorised works for which the alternative apparatus is to be substituted and to any other reasonable requirements of the undertaker.

(3) If the facilities and rights to be afforded by LUL 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 more or 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 to or by LUL by or to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### *Retained apparatus: protection and plan approval*

**48.**—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 46(1) that are near to, or will or may affect, any apparatus the removal of which has not been required by LUL under paragraph 46(1), LUL must submit to the undertaker in question plans of those works.

(2) Those works are to be executed only in accordance with the plans 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 an officer of the undertaker is entitled to watch and inspect the execution of those works.

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

(4) If an undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by LUL, reasonably requires the removal of any apparatus and gives written notice to LUL of that requirement, paragraphs 42 to 47 apply as if the removal of the apparatus had been required by LUL under paragraph 46(1).

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

(6) LUL is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the undertaker in question notice as soon as is reasonably practicable and plans of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) Nothing in sub-paragraph (6) entitles LUL to carry out works to any apparatus but, upon receipt of notice from LUL, the undertaker must proceed to carry out such works as may be required without unreasonable delay.

#### *Expenses*

**49.**—(1) Subject to the following provisions of this paragraph, LUL must repay to an undertaker the reasonable expenses incurred by that undertaker in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Part of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of facilities and rights or exercise of statutory powers for such apparatus);

- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by LUL of any power under this Order; and
- (c) the survey of any land, apparatus or works; the inspection, superintendence and monitoring of works; or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by LUL of any power under this Order; and any other work or thing rendered reasonably necessary in consequence of the exercise by LUL of any such power,

within a reasonable time of being notified by the undertaker that it has incurred such expenses.

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

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) alternative 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 situated,

and the placing of apparatus of that type or capacity or those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by LUL or, in default of agreement, is not determined by arbitration in accordance with article 48 (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 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 must not be treated as placing of apparatus of greater dimensions than those of the existing apparatus, except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by 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 must 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) must, 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 normal 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 (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June 1992, as revised and re-issued from time to time.

(6) In any case where work is carried out by LUL under paragraphs 46(6) to (8) and, if such work had been carried out by the undertaker, the repayment made to the undertaker under sub-paragraph (1) would fall to be reduced under sub-paragraphs (3) to (5), the undertaker must pay to the LUL such sum as represents the amount of that reduction.

### *Indemnity*

**50.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the authorised works, 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 an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, LUL must bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply, and must—

- (a) make reasonable compensation to that undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker; and
- (b) indemnify the undertaker against all claims, demands, proceedings, costs, damages 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; and the fact that any act or thing may have been done by the undertaker on behalf of LUL or in accordance with plans approved by the undertaker or in accordance with any requirement of the undertaker or under its supervision does not, subject to sub-paragraph (2), excuse LUL from any liability under the provisions of this paragraph.

(2) Nothing in sub-paragraph (1) imposes any liability on LUL 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.

(3) An undertaker must give LUL reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of LUL, which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### *Access*

**51.** If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed LUL must provide such alternative means of access to that apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

### *Cooperation*

**52.** Where in consequence of the proposed construction of any of the authorised works, LUL or the undertaker requires the removal of apparatus under paragraph 46(1) or the undertaker makes requirements for the protection or alteration of apparatus under paragraph 48(2), LUL must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised works and the undertaker must use all reasonable endeavours to co-operate with LUL for that purpose.

### *Exercise of safeguarding and survey powers*

**53.**—(1) LUL must, so far as is reasonably practicable, so exercise the powers conferred by article 18 (protective works to buildings) so as not to obstruct or render less convenient the access to any apparatus.

(2) LUL must not, in the exercise of the powers conferred by section 11(3) of the 1965 Act (powers of entry), as applied by this Order, or by article 20 (power to survey and investigate land,

etc.), make any trial holes which interfere with any apparatus without the consent of the undertaker (which must not be unreasonably withheld).

*Arbitration*

**54.** Any difference arising between LUL and an undertaker under this Part of this Schedule (other than a difference as to its meaning or construction) must be determined by arbitration in the manner provided by article 48 (arbitration) and in determining any difference under this Part of this Schedule the arbitrator may, if the arbitrator thinks fit, require LUL to execute any temporary or other works so as to avoid, so far as may be reasonably possible, interference with the use of any apparatus.