

## SCHEDULES

### SCHEDULE 8

Article 46

#### PROTECTION OF PUBLIC UTILITIES

##### Effect

1. For the protection of the public utilities referred to in this Schedule the following provisions have effect, unless otherwise agreed in writing between the undertaker and the public utility concerned.

##### Definitions

2. In this Schedule—

“apparatus” means—

- (a) in the case of Electricity North West Limited, electric lines or electrical plant (as defined in the Electricity Act 1989(1)), belonging to or maintained by that public utility;
- (b) in the case of National Grid Gas Plc, any mains, pipes or other apparatus belonging to or maintained by that public utility for the purposes of gas supply,

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 necessary alternative apparatus in land, includes a reference to apparatus or necessary alternative apparatus under, over or upon land;

“necessary alternative apparatus” means alternative apparatus adequate to enable a public utility to fulfil its statutory or licensed functions in a manner no less efficient than previously;

“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; and

“public utility” means, as the case may be—

- (a) Electricity North West Limited, company number 02366949, whose registered office is at 304 Bridgewater Place, Birchwood Park, Warrington, WA3 6XG; and/or
- (b) National Grid Gas Distribution Limited, company number 10080864, whose registered office is at 1-3 Strand, London, WC2N 5EH;

and in relation to any apparatus, means the public utility to whom it belongs or by whom it is maintained; and

“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 8.

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(1) 1989 c. 29.

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### **On-street apparatus**

3. This Schedule does not apply to apparatus in respect of which the relations between the undertaker and the public utility are regulated by the provisions of Part 3 (street works licence) of the 1991 Act.

### **Apparatus in stopped-up streets**

4.—(1) Where any street is stopped up under article 13 (stopping up of streets), any public utility 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 undertaker must as soon as reasonably practicable grant to the public utility legal easements reasonably satisfactory to the public utility in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the public utility to require the removal of that apparatus under paragraph 8 or the power of the undertaker to carry out works under paragraphs 20 to 27.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 14 (temporary stopping up of streets) the public utility is at liberty at all times to take all necessary access across any such temporarily stopped up highway and to execute and do all works and things in, upon or under any such highway as may be reasonably necessary to enable the public utility to maintain any apparatus which at the time of the stopping up or diversion was in that highway and only in a manner that is consistent with and subject to any restriction or limitations that applied on such access or works under the terms of the 1991 Act enjoyed immediately before the temporary stopping up.

### **Protective works to building**

5. The undertaker must, so far as is reasonably practicable, exercise the powers conferred by article 22 (works to safeguard buildings and the operation of the authorised transit system) so as not to obstruct or render less convenient the access to any apparatus without the written consent of the public utility (such consent not to be unreasonably withheld or delayed).

### **Acquisition**

6. Subject to paragraph 7, the undertaker must not acquire any apparatus or land interest or override any easement or other interest of or from a public utility under the powers conferred by this Order otherwise than by agreement, which must not be unreasonably withheld.

7. The undertaker may in exercise of the powers conferred by this Order acquire or appropriate any land in which any apparatus is placed and, following the removal of such apparatus in accordance with the provisions of this Schedule, any rights in that land relating to that apparatus are extinguished but no apparatus is to be removed nor is any right of the public utility to use, maintain or renew any apparatus to be extinguished until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the public utility.

### **Removal of apparatus**

8. Paragraphs 9 to 16 apply where—

- (a) the undertaker requires the removal of any apparatus for the purpose of constructing any of the authorised works and gives to the public utility not less than 56 days' written notice of that requirement together with a plan of the proposed work and of the proposed position of the necessary alternative apparatus to be provided or constructed; or
- (b) in consequence of the exercise or proposed exercise of any of the powers conferred by this Order, the public utility reasonably requires the removal of any apparatus.

9. Subject to paragraph 10, the undertaker must afford to the public utility the necessary rights and facilities for the construction of any necessary alternative apparatus in other land of the undertaker and subsequently for the use, maintenance and renewal of such apparatus.

10. If the undertaker is unable to obtain the rights and facilities referred to in paragraph 9, the public utility must, on receipt of a written notice to that effect from the undertaker, use its best endeavours to obtain the necessary rights and facilities.

11. The obligation imposed upon the public utility by paragraph 10 does not extend to the exercise by the public utility of any power to acquire any land or rights in land by compulsory purchase order.

12. Any necessary alternative apparatus to be constructed by the public utility under this Schedule must be constructed in such manner, and in such line or situation, as may be agreed between the public utility and the undertaker or, in default of agreement, determined by arbitration under article 53 (arbitration).

13. The public utility must, after the manner of construction and the line or situation of any necessary alternative apparatus have been agreed or determined by arbitration and after the grant to or obtaining by the public utility of any such facilities and rights as are referred to in paragraph 9, proceed without unnecessary delay to construct and bring into operation the necessary alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed in accordance with paragraph 8.

14. If the undertaker gives notice in writing to the public utility that it desires to carry out any part of any work in connection with the construction or removal of apparatus, such work, instead of being carried out by the public utility, may be carried out by the undertaker with the prior written consent of the public utility (which must not be unreasonably withheld and may 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 public utility and the undertaker or, in default of agreement, determined by arbitration under article 53 (arbitration), without unnecessary delay under the superintendence (if given) and to the reasonable satisfaction of the public utility.

15. In carrying out any work under paragraph 14 the undertaker must comply with all statutory obligations which would have been applicable had the works been carried out by the public utility.

16. Nothing in paragraph 14 authorises the undertaker to carry out the actual placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or, where the apparatus is laid in a trench, execute any filling around the apparatus within 300 millimetres (measured in any direction) of the apparatus.

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

17. Where, in accordance with the provisions of this Schedule, the undertaker affords to the public utility facilities and rights for the construction, use, maintenance and renewal in land of the undertaker of necessary 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 undertaker and the public utility or, in default of agreement, determined by arbitration under article 53 (arbitration).

18. In determining the terms and conditions mentioned in paragraph 17 in respect of necessary alternative apparatus to be constructed across or along the authorised works the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety of the authorised works and for securing any subsequent alterations or adaptations of the necessary alternative apparatus which may be required to prevent interference with any such works; and

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- (b) so far as it may be reasonable and practicable to do so in the circumstances of the case, give effect to any terms and conditions (if any) applicable to the apparatus constructed across or along the authorised works for which the necessary alternative apparatus is to be substituted and to any other reasonable requirements of the public utility.

**19.** If the facilities and rights to be afforded by the undertaker in respect of any necessary alternative apparatus under paragraph 17 and the terms and conditions subject to which the same are to be granted are, in the opinion of the arbitrator, more or less favourable on the whole to the public utility than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbitrator must make such provision for the payment of compensation to or by the undertaker by or to the public utility in that respect as appears to the arbitrator to be reasonable having regard to all the circumstances of the case.

### **Retained apparatus**

**20.**—(1) Not less than 56 days before commencing to construct or renew any specified work, the undertaker must submit to the public utility plans of the works.

(2) The plan to be submitted to the public utility under sub-paragraph (1) must (unless otherwise agreed in writing) include a method statement and describe—

- (a) the exact position of the specified work;
- (b) the level at which the specified works are proposed to be constructed or renewed; and
- (c) the manner of their construction or renewal including details of excavation and positioning of plant.

**21.** The undertaker must not commence the construction or renewal of any specified work until the public utility has given written approval of the plans so submitted.

**22.** Any approval of the public utility required under paragraph 21—

- (a) may be given subject to reasonable conditions for any purpose mentioned in paragraph 23;
- (b) must not be unreasonably withheld; and
- (c) is to be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

**23.** A specified work is to be constructed only in accordance with the approved plans and all reasonable requirements made by the public utility for the alteration, or otherwise for the protection, of the apparatus, or for securing access to it, and the public utility is entitled to watch and inspect the carrying out of the work.

**24.** If within 42 days after the submission to it of any plans under paragraph 20, in consequence of the works proposed by the undertaker the public utility reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, the provisions of this Schedule are to have effect as if the removal of the apparatus had been required by the public utility under paragraph 8.

**25.** Nothing in paragraph 20 or 24 precludes the undertaker from submitting at any time, or from time to time, but in any case not less than 28 days before commencing the construction of any specified work, a new plan in place of the plan previously submitted, in which case the provisions of those paragraphs are to apply to, and in respect of, the new plan.

**26.** The undertaker is not required to comply with paragraph 20 in a case of emergency but, in such a case, it must give to the public utility notice as soon as reasonably practicable, and a plan of the works as soon as reasonably practicable afterwards, and must comply with paragraph 23 so far as reasonably practicable in the circumstances.

27. Nothing in paragraph 26 entitles the undertaker to carry out works to any apparatus but, upon receipt of notice from the undertaker, the public utility must take such action as may be required (which may include the carrying out of works if it thinks fit) without unnecessary delay.

### **Expenses and costs**

28. Subject to the following provisions of this Schedule, the undertaker must repay to a public utility all expenses reasonably incurred by that public utility in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any necessary alternative apparatus (including any costs reasonably incurred in connection with the acquisition of rights) and in watching and inspecting the execution of works and in making reasonable requirements under paragraph 22.

29. The value of any apparatus removed under the provisions of this Schedule is to be deducted from any sum payable under paragraph 28, that value being calculated after removal.

30. If in accordance with the provisions of this Schedule—

- (a) necessary 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 that is suitable for the purpose required; or
- (b) apparatus (whether existing apparatus or necessary alternative 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 undertaker 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 paragraph would be payable to the public utility under paragraph 28 is to be reduced by the amount of that excess.

31. For the purposes of paragraph 30—

- (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 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 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.

32. An amount which apart from this paragraph would be payable to a public utility under paragraph 28 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 public utility 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 (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June 1992, as revised and reissued from time to time.

33. In any case where work is carried out by the undertaker under paragraphs 14 to 16 and, if such work had been carried out by the public utility, the repayment made to the public utility under paragraph 28 would fall to be reduced under paragraphs 30 to 32, the public utility must give credit to the undertaker for such sum as represents the amount of that reduction.

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## **Indemnity**

**34.** If by reason or in consequence of the construction of the specified works, any damage is caused to any apparatus or necessary 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 there is any interruption in any service provided or of any access to any apparatus, or in the supply of any goods, by any public utility, the undertaker must—

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

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

**35.** The fact that any act or thing may have been done by a public utility on behalf of the undertaker or in accordance with a plan approved by a public utility or in accordance with any requirement of a public utility or under its supervision does not, subject to paragraph 36, excuse the undertaker from liability under the provisions of paragraph 34.

**36.** Nothing in paragraph 34 imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a public utility, its officers, servants, contractors or agents.

**37.** A public utility must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker, such consent not to be unreasonably withheld or delayed.

## **Co-operation**

**38.** Where in consequence of the proposed construction of any of the specified works, the undertaker or a public utility requires the removal of apparatus under paragraph 8 or a public utility makes requirements for the protection or alteration of apparatus under paragraph 23, the undertaker 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 each public utility must use its best endeavours to co-operate with the undertaker for that purpose.

## **Access**

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