

SCHEDULES

SCHEDULE 13

Section 183.

PROTECTIVE PROVISIONS IN RESPECT OF CERTAIN UNDERTAKINGS

PART I

PROVISIONS APPLYING GENERALLY

General provisions protecting undertakings

- 1 (1) Nothing in this Act conferring power on a relevant undertaker to carry out any works shall confer power to do anything, except with the consent of the persons carrying on an undertaking protected by this paragraph, which, whether directly or indirectly, so interferes or will so interfere—
- (a) with works or property vested in or under the control of the persons carrying on that undertaking, in their capacity as such; or
 - (b) with the use of any such works or property,
- as to affect injuriously those works or that property or the carrying on of that undertaking.
- (2) Without prejudice to the construction of sub-paragraph (1) above for the purposes of its application in relation to the other provisions of this Act, that sub-paragraph shall have effect in its application in relation to the relevant sewerage provisions as if any use of, injury to or interference with any sluices, floodgates, sewers, groynes, sea defences or other works which are vested in or under the control of the NRA or an internal drainage board were such an interference with works or property vested in or under the control of the NRA or that board as to affect injuriously the works or property or the carrying on of the undertaking of the NRA or of that board.
- (3) A consent for the purposes of sub-paragraph (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (4) Subject to the following provisions of this Schedule, any dispute—
- (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in sub-paragraph (1) above;
 - (b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or
 - (c) as to whether any condition subject to which any such consent has been given was reasonable,
- shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (5) The following are the undertakings protected by this paragraph, that is to say—

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- (a) the undertakings of the NRA, the Civil Aviation Authority, the British Coal Corporation and the Post Office;
 - (b) the undertaking of any relevant undertaker;
 - (c) any undertaking consisting in the running of a telecommunications code system, within the meaning of Schedule 4 to the Telecommunications Act 1984;
 - (d) any airport to which Part V of the Airports Act 1986 applies;
 - (e) the undertaking of any public gas supplier within the meaning of Part I of the Gas Act 1986;
 - (f) the undertaking of any person authorised by a licence under Part I of the Electricity Act 1989 to generate, transmit or supply electricity;
 - (g) the undertaking of any navigation, harbour or conservancy authority or of any internal drainage board;
 - (h) the undertaking of any railway undertakers;
 - (i) any public utility undertaking carried on by a local authority under any Act or under any order having the force of an Act.
- (6) For the purposes of this paragraph any reference in this paragraph, in relation to any such airport as is mentioned in sub-paragraph (5)(d) above, to the persons carrying on the undertaking is a reference to the airport operator.

Protection for statutory powers and jurisdiction

- 2 Nothing in any provision of this Act conferring power on a relevant undertaker to carry out any works shall confer power to do anything which prejudices the exercise of any statutory power, authority or jurisdiction from time to time vested in or exercisable by any persons carrying on an undertaking protected by paragraph 1 above.

Special protection for certain undertakings in respect of street works

- 3 (1) Subject to the following provisions of this paragraph and without prejudice to the other provisions of this Schedule, the powers under the street works provisions to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the Highways Act 1980)—
- (a) is under the control or management of, or is maintainable by, railway undertakers or a navigation authority; or
 - (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,
- except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.
- (2) Sub-paragraph (1) above shall not apply to any exercise of the powers conferred by the street works provisions for the carrying out of emergency works, within the meaning of Part III of the New Roads and Street Works Act 1991.
- (3) A consent given for the purposes of sub-paragraph (1) above may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.
- (4) Any dispute—

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- (a) as to whether a consent for the purposes of sub-paragraph (1) above should be given or withheld; or
- (b) as to whether the conditions to which any such consent is made subject are reasonable,

shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

- (5) If any relevant undertaker contravenes, without reasonable excuse, the requirements of sub-paragraph (1) above, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (6) The restrictions contained in paragraphs (1) to (5) of section 32 of the Tramways Act 1870 (protection of tramways) shall apply in relation to any exercise of a power conferred by the street works provisions—
 - (a) as they apply in relation to the powers mentioned in that section; and
 - (b) as if references in that section to a tramway included references to a trolley vehicle system.
- (7) In this paragraph “the street works provisions” means so much of sections 158, 161 and 162 of this Act as relates to powers exercisable in relation to streets.
- (8) Until the coming into force of section 52 of the New Roads and Street Works Act 1991, sub-paragraph (2) above shall have effect as if the reference to Part III of that Act were a reference to the Public Utilities Street Works Act 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this paragraph).

Protection for telecommunication systems

- 4 Paragraph 23 of Schedule 2 to the Telecommunications Act 1984 (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply to every relevant undertaker for the purposes of any works carried out by that undertaker in exercise of any of the powers conferred by any enactment (including, in the case of a statutory water company, section 1 of the Statutory Water Companies Act 1991).

PART II

FURTHER PROTECTIVE PROVISIONS IN RESPECT OF SEWERAGE POWERS

Protection for dock undertakers

- 5 (1) Subject to the provisions of this paragraph, nothing in the relevant sewerage provisions shall authorise a sewerage undertaker, without the consent of the dock undertakers concerned—
 - (a) to interfere with any river, canal, dock, harbour, basin, lock or reservoir so as injuriously to affect navigation thereon or the use thereof or the access thereto, or to interfere with any towing path, so as to interrupt the traffic thereon;
 - (b) to interfere with any bridges crossing any river, canal, dock, harbour or basin;

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- (c) to carry out any works in, across or under any dock, harbour, basin, wharf, quay or lock, or any land which belongs to dock undertakers and is held or used by them for the purposes of their undertaking;
 - (d) to carry out any works which will interfere with the improvement of, or the access to, any river, canal, dock, harbour, basin, lock, reservoir, or towing path, or with any works appurtenant thereto or any land necessary for the enjoyment or improvement thereof.
- (2) For the purposes of this paragraph dock undertakers shall be deemed to be concerned with any river, canal, dock, harbour, basin, lock, reservoir, towing path, wharf, quay or land if—
- (a) it belongs to them and forms part of their undertaking; or
 - (b) they have statutory rights of navigating on or using it or of demanding tolls or dues in respect of navigation thereon or the use thereof.
- (3) A consent under this paragraph shall not be unreasonably withheld.
- (4) Any dispute as to whether or not consent under this paragraph is unreasonably withheld shall be referred, if either party so require, to the arbitration of a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.
- (5) Upon an arbitration under this paragraph, the arbitrator shall determine—
- (a) whether any works which the sewerage undertaker proposes to carry out are such works as under this paragraph the undertaker is not entitled to carry out without the consent of any dock undertakers;
 - (b) if they are such works, whether the injury, if any, to the undertakers will be of such a nature as to admit of being fully compensated by money; and
 - (c) if the works are of such a nature, the conditions subject to which the sewerage undertaker may carry out the works, including the amount of the compensation (if any) to be paid by the sewerage undertaker to the dock undertakers.
- (6) The sewerage undertaker in question shall not proceed to carry out any proposed works if, on an arbitration under this paragraph, the arbitrator determines—
- (a) that the proposed works are such works as the sewerage undertaker is not entitled to carry out without the consent of the dock undertakers; and
 - (b) that the works would cause injury to the dock undertakers of such a nature as not to admit of being fully compensated by money,
- but, in any other case, the sewerage undertaker may carry out the works subject to compliance with such conditions, including the payment of such compensation, as the arbitrator may have determined.
- (7) Nothing in this paragraph shall be construed as limiting the powers of a sewerage undertaker under this Act in respect of the opening and the breaking up of streets and bridges for the purpose of constructing, laying and maintaining sewers, drains and pipes.

Protection for airports, railways etc.

- 6 (1) Subject to the provisions of this paragraph, nothing in the relevant sewerage provisions shall authorise a sewerage undertaker, without the consent of the Civil

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Aviation Authority or, as the case may be, of the airport operator or railway undertakers concerned, to carry out any works along, across or under—

- (a) any property of the Civil Aviation Authority;
- (b) an airport to which Part V of the Airports Act 1986 applies; or
- (c) any railway of any railway undertakers.

- (2) Sub-paragraphs (3) to (7) of paragraph 5 above shall apply for the purposes of this paragraph as they apply for the purposes of sub-paragraph (1) of that paragraph but as if references to the dock undertakers were references, as the case may require, to the Civil Aviation Authority, to the relevant airport operator or to the railway undertakers.

Saving for Part I and other powers

- 7 The provisions of this Part of this Schedule are without prejudice to the provisions of Part I of this Schedule or to any power conferred on a sewerage undertaker otherwise than by the relevant sewerage provisions.