

SCHEDULES

SCHEDULE 3

Article 28

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers etc. on land acquired

1.—(1) 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 or appropriated by the undertaker under this Order subject to the following provisions of this paragraph; 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) above, references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public telecommunications operator 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) above, 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 undertaker 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) Sub-paragraph (3) above shall not apply in the case of the removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer, or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1) above, as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which Part III of the New Roads and Street Works Act 1991(1) or paragraph 2 below applies.

(6) In this paragraph—

“the 1990 Act” means the Town and Country Planning Act 1990;

“public telecommunications operator” means—

- (a) a person authorised, by a licence to which section 9 of the Telecommunications Act 1984(2) applies, to run a public telecommunications system, or

(1) 1991 c. 22.

(2) 1984 c. 12.

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- (b) a person to whom the telecommunications code has been applied pursuant to section 10 of that Act; and
“public utility undertakers” has the same meaning as in the Highways Act 1980⁽³⁾.

For the protection of London Underground Limited

2.—(1) The provisions of this paragraph shall have effect except in so far as may be otherwise agreed between the company and the undertaker and in this paragraph—

“the company” means London Underground Limited;

“construction” includes execution, placing and altering and “construct” and “constructed” shall be construed accordingly;

“designated property” means any railways of the company and any works connected therewith for the maintenance or operation of which the company are responsible and includes any lands, premises, arches, cellars or vaults held or used by the company for the purposes of such railways or works;

“the engineer” means an engineer to be appointed by the company;

“plans” includes sections, drawings, calculations, methods of construction and particulars and “approved plans” means plans approved or deemed to be approved or settled by arbitration in accordance with the provisions of this Order; and

“the specified works” means so much of the authorised works as may be situated within 15 metres of, or may in any way affect, designated property.

(2) Notwithstanding anything in this Order or shown on the deposited plans, the undertaker shall not purchase compulsorily any designated property but it may purchase such easements or other rights in, under or over designated property in accordance with the provisions of article 11 above as it may reasonably require for the purpose of the specified works.

(3) The undertaker shall, before commencing the specified works, furnish to the company proper and sufficient plans thereof for the approval of the engineer, whose approval shall not be unreasonably withheld, and shall not commence the specified works until plans thereof have been approved in writing by the engineer or settled by arbitration but, if within 56 days after such plans have been furnished to the company the engineer shall not have intimated his disapproval thereof and the grounds of his disapproval, he shall be deemed to have approved the same.

(4) If within 56 days after such plans have been furnished to the company, the company shall give notice to the undertaker that the company desire themselves to construct any part of the specified works which in the opinion of the engineer will or may affect the stability of designated property or the safe operation of the company’s railways, then, if the undertaker desires such part of the specified works to be constructed, the company shall construct it with all reasonable dispatch on behalf of and to the reasonable satisfaction of the undertaker in accordance with approved plans.

(5) Upon signifying his approval or disapproval of the plans the engineer may specify any protective works, whether temporary or permanent, which in his opinion should be carried out before the commencement of the specified works to ensure the safety or stability of designated property and such protective works as may be reasonably necessary for those purposes shall be constructed with all reasonable dispatch and the undertaker shall not commence the construction of the specified works until the engineer shall have notified the undertaker that the protective works have been completed.

(6) The undertaker shall give to the engineer not less than 28 days' notice of its intention to commence the construction of any of the specified works and also, except in an emergency (when it shall give such notice as may be reasonably practicable), of its intention to carry out any works for

(3) 1980 c. 66.

the repair or maintenance of the specified works in so far as such works of repair or maintenance affect or interfere with the designated property.

- (7) The specified works shall, when commenced, be carried out—
- (a) with all reasonable dispatch in accordance with approved plans;
 - (b) under the competent supervision (if given) and to the reasonable satisfaction of the engineer; and
 - (c) in such manner as to cause—
 - (i) as little damage to designated property as may be; and
 - (ii) as little interference as may be with the conduct of traffic on any railway of the company and the use by passengers of designated property;

and, if any damage to designated property or any such interference shall be caused by the carrying out of the specified works, the undertaker shall, notwithstanding any such approval as aforesaid, make good such damage and shall on demand pay to the company all reasonable expenses to which they may be put and compensation for any loss which they may sustain by reason of any such damage or interference but nothing in this paragraph shall impose any liability on the undertaker with respect to any damage, costs, expenses or loss which is attributable to the act, neglect or default of the company or their servants, contractors or agents.

(8) The undertaker shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and shall supply him with all such information as he may reasonably require with regard to the specified works or the method of construction thereof.

(9) The company shall at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by the company under this paragraph during their construction and shall supply the undertaker with such information as it may reasonably require with regard to such works or the method of construction thereof.

(10) If any alterations or additions, either permanent or temporary, to designated property shall be reasonably necessary during the construction of the specified works or during a period of 12 months after the completion thereof in consequence of the construction of the specified works, such alterations and additions may be effected by the company at a reasonable cost after not less than 28 days' notice in writing (save in case of emergency whereupon the engineer shall give such notice as is reasonable in the circumstances) from the date of submission of plans, programmes and estimates of costs of such alterations and additions having been given to the undertaker, and the undertaker shall pay to the company on demand the cost thereof as certified by the engineer.

(11) The undertaker shall repay to the company all costs, charges and expenses reasonably incurred by the company—

- (a) in respect of the approval by the engineer of plans submitted by the undertaker;
- (b) in constructing any part of the specified works on behalf of the undertaker as provided by sub-paragraph (4) above or in constructing any protective works under the provisions of sub-paragraph (5) above;
- (c) in respect of the employment of any inspectors, signalmen, watchmen and other persons whom it shall be reasonably necessary to appoint for inspecting, watching, lighting and signalling any railway of the company and for preventing as far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of the specified works;
- (d) in respect of any special traffic working resulting from any speed restrictions which may, in the opinion of the engineer, require to be imposed and which may be due to the construction or failure of the specified works or from the substitution, suspension or diversion of railway services of the company which may be necessary for the same reason;

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- (e) in respect of any additional temporary lighting of designated property in the vicinity of the works, being lighting made reasonably necessary during and by reason of the construction or failure of the specified works; and
- (f) in respect of the supervision by the engineer of the specified works.

(12) Subject to paragraph (13) below, the undertaker shall be responsible for and make good to the company all costs, charges, damages and expenses not otherwise provided for in this paragraph which may be occasioned to or reasonably incurred by the company—

- (a) by reason of the specified works or the failure thereof; and
- (b) by reason of any act or omission of the undertaker or of any persons in their employ or of their contractors or others whilst engaged upon the construction of the specified works,

and the undertaker shall effectively indemnify and hold harmless the company from and against all claims and demands arising out of or in connection with the construction of the specified works or any such failure, act or omission as aforesaid and the fact that any act or thing may have been done by the company on behalf of the undertaker or in accordance with approved plans, or in accordance with any requirement of the engineer or under his supervision shall not (if it was done without negligence on the part of the company or of any person in their employ or of their contractors or agents whilst engaged upon the construction of the specified works) excuse the undertaker from any liability under the provisions of this paragraph.

(13) The company shall give to the undertaker reasonable notice of any claim or demand and no settlement or compromise of such a claim or demand shall be made without the prior consent of the undertaker.

For the protection of the Environment Agency

3.—(1) The provision of this paragraph shall have effect unless otherwise agreed in writing between the undertaker and the Environment Agency.

(2) Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991(4).

(3) Nothing in this Order or in any enactment incorporated with or applied by this Order shall be taken as permitting the undertaker to carry out works to alter the course of or otherwise interfere with, the Duke of Northumberland's river and the Longford River.

(4) 1991 c. 57.