

SCHEDULES

SCHEDULE 6

PROTECTIVE PROVISIONS

PART III

PROTECTION FOR ELECTRICITY AND GAS UNDERTAKERS

Removal of apparatus : alternative apparatus

4.—(1) If, in the exercise of the powers of this Order, the Council acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part of this Schedule, and any right of an undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the Council requires the removal of any apparatus placed in that land, it shall give to the undertaker in question written notice of that requirement, together with a plan and section 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 of this Order an undertaker reasonably needs to remove any of its apparatus) the Council shall, 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 Council and thereafter for the retention and 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 Council, or the Council 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, the undertaker in question shall, on receipt of a written notice to that effect from the Council, forthwith use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) The obligation imposed by sub-paragraph (3) shall not extend to the exercise by the undertaker of any power to acquire compulsorily any land or rights in land.

(5) Any alternative apparatus to be constructed in land of the Council under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the Council or in default of agreement settled by arbitration pursuant to article 44.

(6) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to the undertaker of any facilities and rights as are referred to in sub-paragraph (2) or (3), proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Council to be removed under the provisions of this Part of this Schedule.

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(7) Notwithstanding anything in sub-paragraph (6), if the Council gives notice in writing to the undertaker in question that it desires itself to execute any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as will take place in any land of the Council, that work may, with the prior written consent of the undertaker (which shall not be unreasonably withheld and shall be subject to any such conditions as are reasonable and proper to protect the apparatus), in lieu of being executed by the undertaker, be executed by the Council with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(8) Nothing in sub-paragraph (7) shall authorise the Council to execute the actual 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 300 millimetres of the apparatus.

5.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Council affords to an undertaker facilities and rights for the construction and maintenance in land of the Council of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the Council and the undertaker in question or in default of agreement settled by arbitration in accordance with article 44.

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along any authorised guided busway of the Council or adjacent to any other of the authorised works, the arbitrator shall—

- (a) give effect to all reasonable requirements of the Council for ensuring the safety and efficient operation of the busway system and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the Council or the traffic on the busway system; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to any terms and conditions applicable to the apparatus for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the Council 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 shall make such provision for the payment of compensation by the Council to that undertaker as appears to him to be reasonable having regard to all the circumstances of the particular case.