

SCHEDULES

SCHEDULE 2

Article 10

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

PART 1

APPARATUS OF STATUTORY UNDERTAKERS, ETC. ON LAND ACQUIRED

1. Subject to the following provisions of this Part of this Schedule, 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 Company under this Order; 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 paragraph 1, references to the appropriate Minister are references to the Secretary of State.

3. Where any apparatus of public utility undertakers or of an electronic communications code operator or former PTO 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 paragraph 1, 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 Company 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. Paragraph 3 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 Company 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 paragraph 1, as applied by that paragraph, shall not have effect in relation to apparatus as respects which Part 3 of the New Roads and Street Works Act 1991(1) applies.

6. In this Part of this Schedule—

“the 1990 Act” means the Town and Country Planning Act 1990(2);

(1) 1991 c. 22.

(2) 1990 c. 8.

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“the 2003 Act” means the Communications Act 2003⁽³⁾;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system shall be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State or a Northern Ireland department is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“electronic communications network” and “electronic communications service” each has the same meaning as in the 2003 Act;

“former PTO” means a person—

- (a) who is a provider of a public electronic communications network or a public electronic communications service which, immediately before the date on which the repeal by the 2003 Act of section 7 of the Telecommunications Act 1984⁽⁴⁾ comes into force, was designated as a public telecommunication system under section 9 of that Act; and
- (b) who, immediately before that date, was authorised to provide that network or service by a licence to which section 8 of that Act applied;

“operator”, in relation to an electronic communications code network, means—

- (a) the electronic communications code operator providing that network; or
- (b) the Secretary of State or a Northern Ireland department, to the extent that they are providing or proposing to provide that network;

“owner”, in relation to land, means a person, other than a mortgagee not in possession, who is for the time being entitled to dispose of the fee simple of land (whether in possession or reversion) and includes a person holding, or entitled to the rents and profits of, the land under a lease or tenancy having an unexpired term exceeding 3 years;

“provide” and cognate expressions, in relation to an electronic communications network, an electronic communications service or associated facilities, are to be construed in accordance with section 32(4) of the 2003 Act;

“public electronic communications network” and “public electronic communications service” each has the same meaning as in Chapter 1 of Part 2 of the 2003 Act;

“public utility undertakers” has the same meaning as in the Highways Act 1980⁽⁵⁾.

(3) 2003 c. 21.

(4) 1984 c. 12.

(5) 1980 c. 66.

PART 2

PROTECTION FOR NATIONAL GRID GAS PLC

1.—(1) For the protection of National Grid Gas the following provisions shall, unless otherwise agreed in writing between the Company and National Grid Gas, have effect.

(2) In this Part of this Schedule—

“adequate alternative apparatus” means alternative apparatus adequate to enable National Grid Gas to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by National Grid Gas (not being, except in paragraph 2, apparatus in respect of which the relations between the Company and National Grid Gas are regulated by the provisions of Part 3 of the New Roads and Street Works Act 1991⁽⁶⁾), and includes any structure for the lodging therein of apparatus or for giving 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 or upon land;

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

“National Grid Gas” means National Grid Gas Plc being a person authorised to carry on, in any area within which the Company is by this Order authorised to purchase land or execute works, an undertaking for the supply, transportation or storage of gas.

(3) The provisions of Part 1 of this Schedule (apparatus of statutory undertakers, etc. on land acquired) shall not apply in relation to apparatus to which this Part of this Schedule applies.

2. Notwithstanding the temporary stopping up or diversion of any highway National Grid Gas shall be at liberty at all times to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain, renew, or use any apparatus which at the time of the stopping up or diversion was in that highway.

3.—(1) The Company, in the case of the powers conferred by this Order, shall, so far as is reasonably practicable, so exercise those powers as not to obstruct or render less convenient the access to any apparatus and, if by reason of the exercise of those powers, any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of National Grid Gas or any interruption in the supply of gas by National Grid Gas is caused, the Company shall bear and pay the cost reasonably incurred by National Grid Gas in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

(a) make reasonable compensation to National Grid Gas for any loss sustained by it; and

(b) indemnify National Grid Gas against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by National Grid Gas,

by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on the Company with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of National Grid Gas or its contractors or workmen; and National Grid Gas shall give to the Company reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Company.

(6) 1991 c. 22.

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4. Notwithstanding anything in this Order or shown on the land plans the Company shall not acquire any apparatus under the powers of this Order otherwise than by agreement.

5.—(1) If the Company, in the exercise of the powers of this Order, 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 National Grid Gas to use, maintain, repair, inspect or renew that apparatus in that land shall not be extinguished until adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of National Grid Gas.

(2) If the Company, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, requires the removal of any apparatus placed in that land, it shall give to National Grid Gas not less than 56 days 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 so as to provide adequate alternative apparatus in place of the apparatus to be removed, and in that case (or if in consequence of the exercise of any of the powers of this Order National Grid Gas reasonably requires to remove any apparatus) the Company shall, subject to sub-paragraph (3), afford to National Grid Gas the necessary facilities and rights for the construction of the alternative apparatus in other land of the Company and thereafter for the use, maintenance and renewal of that apparatus.

(3) If the alternative apparatus or any part of it is to be constructed elsewhere than in other land of the Company, or the Company is unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or part of it is to be constructed, National Grid Gas shall, on receipt of a written notice to that effect from the Company, forthwith use its reasonable endeavours to obtain the necessary facilities and rights in that last-mentioned land, provided that the obligation shall not extend to the exercise by National Grid Gas of any power to acquire compulsorily any land or rights in land.

(4) Any alternative apparatus to be constructed in land of the Company under this Part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between National Grid Gas and the Company or in default of agreement settled by arbitration.

(5) National Grid Gas shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as aforesaid and after the grant to National Grid Gas of any such 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 Company to be removed under the provisions of this Part of this Schedule.

(6) Notwithstanding anything in sub-paragraph (5), if the Company gives notice in writing to National Grid Gas 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 Company, that work, instead of being carried out by National Grid Gas, shall be carried out by the Company in accordance with plans and specifications and in a position agreed between National Grid Gas and the Company or in default of agreement determined by arbitration, with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of National Grid Gas.

(7) Nothing in sub-paragraph (6) shall authorise the Company 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 (measured in any direction) of the apparatus.

6.—(1) Where, in accordance with the provisions of this Part of this Schedule, the Company affords to National Grid Gas facilities and rights for the construction, maintenance and renewal in land of the Company of alternative apparatus in substitution for apparatus to be removed as aforesaid, those facilities and rights shall be granted upon such terms and conditions as may be agreed between

the Company and National Grid Gas or in default of agreement settled by arbitration in accordance with sub-paragraphs (2) and (3).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in any land of the Company, the arbitrator shall—

- (a) give effect to all reasonable requirements of the Company for ensuring the safe and efficient operation of the Felixstowe South Reconfiguration 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 Company; 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 for which the alternative apparatus is to be substituted, have regard to National Grid Gas's ability to fulfil its service obligations and to any other reasonable requirements of National Grid Gas.

(3) If the facilities and rights to be afforded by the Company in respect of any alternative apparatus and the terms and conditions subject to which the same are to be granted are in the opinion of the arbitrator less favourable on the whole to National Grid Gas 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 Company to National Grid Gas as appears to him to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 56 days before commencing the execution of any works that are referred to in paragraph 5(2) and are near to, or will or may affect, any apparatus the removal of which has not been required by the Company under paragraph 5(2), the Company shall submit to National Grid Gas a plan, section and description of the works to be executed.

(2) Those works shall be executed only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by National Grid Gas for the alteration or otherwise for the protection of the apparatus or for securing access thereto and National Grid Gas shall be entitled by its officer to watch and inspect the execution of those works.

(3) Any requirements made by National Grid Gas under sub-paragraph (2) shall be made within a period of 42 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If National Grid Gas, within 42 days after the submission to it of a plan, section and description shall, in consequence of the works proposed by the Company, reasonably require the removal of any apparatus and gives written notice to the Company of that requirement, the foregoing provisions of this Part of this Schedule shall apply as if the removal of the apparatus had been required by the Company under paragraph 5(2).

(5) Nothing in this paragraph shall preclude the Company 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, a new plan, section and description of the works in place of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply in respect of the new plan, section and description.

(6) The Company shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to National Grid Gas notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (2) so far as reasonably practicable in the circumstances.

8. Where, by reason of this Order, any part of any highway in which any apparatus is situated ceases to be part of a highway National Grid Gas may exercise the same rights of access to such apparatus as it enjoyed immediately before the coming into force of this Order and the Company

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shall grant to National Grid Gas legal easements or rights reasonably satisfactory to National Grid Gas, but nothing in this paragraph shall affect any right of the Company or of National Grid Gas to require removal of such apparatus under this Part of this Schedule or the power of the Company to execute works in accordance with paragraph 7.

9.—(1) Subject to the following provisions of this paragraph, the Company shall pay to National Grid Gas the costs, charges and expenses reasonably incurred by National Grid Gas in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 5(2), less the value of any apparatus removed under the provisions of this Part of this Schedule (that value being calculated after removal), and shall also make compensation to National Grid Gas—

(a) for any damage caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal in accordance with the provisions of this Part of this Schedule); and

(b) for any other expenses, loss, damages, penalty or costs incurred by National Grid Gas, by reason of the execution, maintenance, user or failure of those works or otherwise by reason of the exercise by the Company of the powers of this Order.

(2) If in pursuance of the provision of this Part of this Schedule—

(a) 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 in compliance with the statutory obligations; 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,

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 Company or, in default of agreement, is not determined by arbitration to be necessary, then, if it 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 National Grid Gas by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(3) For the purposes of sub-paragraph (2) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.

(4) An amount which apart from this sub-paragraph would be payable to National Grid Gas in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant, to sub-paragraph (2)) shall, 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 National Grid Gas 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.

(5) Sub-paragraphs (2) to (4) shall not apply where the authorised works constitute major transport works for the purposes of Part 3 of the New Roads and Street Works Act 1991(7), but instead—

(7) 1991 c. 22.

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- (a) the allowable costs of the construction of works under this Part of this Schedule shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by the Company and National Grid Gas in such proportions as may be prescribed by any such regulations.

10. If in consequence of the exercise of the powers of this Order the access to any apparatus is materially obstructed the Company shall, so far as reasonably practicable, provide alternative means of access to such apparatus which is no less convenient than the access enjoyed by National Grid Gas prior to the obstruction.

11.—(1) Where, by reason of the stopping up of any highway, any apparatus belonging to National Grid Gas and laid or placed in such highway or elsewhere is rendered derelict or unnecessary, the Company shall, subject to sub-paragraph (2), pay to National Grid Gas the then value of such apparatus (which shall thereupon become the property of the Company) and the reasonable cost of and incidental to the cutting off of such apparatus from any other apparatus, and of and incidental to the execution or doing of any works or things rendered necessary or expedient by reason of such apparatus being so rendered derelict or unnecessary.

(2) The Company shall not under the provisions of this paragraph be required to pay to National Grid Gas the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of National Grid Gas, other apparatus has at the expense of the Company been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary.

12. Any difference arising between the Company and National Grid Gas under this Part of this Schedule shall be referred to and settled by a single arbitrator to be agreed between the parties or, failing agreement, to be appointed on the application of either party (after notice in writing to the other) by the President of the Institution of Civil Engineers.

13. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the Company and National Grid Gas in respect of any apparatus laid or erected in land belonging to the Company on the coming into force of this Order.