

## SCHEDULES

### SCHEDULE 9

#### PROTECTION OF INTERESTS

#### PART 10

#### FOR THE PROTECTION OF SSE SERVICES PLC AND SOUTHERN ELECTRIC POWER DISTRIBUTION PLC

##### *Expenses and costs*

**109.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a protected person all expenses reasonably incurred by that protected person 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 106(2), including any costs reasonably incurred in connection with the acquisition of rights under paragraph 106(3), and in watching and inspecting the execution of works under paragraph 108(2) and in making reasonable requirements under paragraph 108(3).

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.

(3) If in accordance with the provisions 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 at the election of the protected person; 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 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 at the election of the protected person and is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 42 (arbitration) to be necessary, then, if such placing 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 sub-paragraph would be payable to the protected person in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (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; 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.

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**110.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the authorised development or any such works referred to in paragraphs 104, 106(2) or 108(1), or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or 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 property of a protected person, 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 protected person, the undertaker must—

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

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

(2) The fact that any act or thing may have been done by a protected person on behalf of the undertaker or in accordance with a plan approved by a protected person or in accordance with any requirement of a protected person or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) 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 protected person, its officers, servants, contractors or agents.

(4) A protected person 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 who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Any difference arising between the undertaker and the protected person under this Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).