

## SCHEDULES

### SCHEDULE 7

#### PROTECTIVE PROVISIONS

##### PART VI

##### PROTECTION OF CERTAIN STATUTORY UNDERTAKERS

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the appropriate authority and the undertakers concerned, have effect for the protection of the undertakers.
- (2) In this Part of this Schedule—
- "appropriate authority" does not include the Secretary of State in respect of the A20 improvement works;
- "the undertakers" means any person authorised to carry on an undertaking for the supply of electricity, gas or water within any area within which land is to be acquired or works are to be constructed under this Act and—
- (a) in relation to water undertakers, includes a water authority in their capacity as an authority authorised to carry on an undertaking for the supply of water within their area; and
- (b) in relation to any apparatus, means the undertakers to whom the apparatus belongs or by whom the apparatus is maintained;
- "apparatus" means—
- (a) in the case of electricity undertakers, electric lines and works (as respectively defined in the Electric Lighting Act 1882) belonging to, or maintained by, those undertakers; or
- (b) in the case of gas or water undertakers, mains, pipes or other apparatus belonging to, or maintained by, those undertakers for the purposes of gas or water supply;
- (not being in any case apparatus in respect of which the relations between the appropriate authority and the undertakers are regulated by the provisions of Part II of the Public Utilities Street Works Act 1950), and includes any structure for the lodging therein of apparatus;
- "alternative apparatus" means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;
- "in" in a context referring to apparatus includes under, over, across, along or upon.
- 2 Notwithstanding anything in this Act or shown on the deposited plans, the appropriate authority shall not acquire any apparatus under section 8 of this Act otherwise than by agreement.

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*Status: This is the original version (as it was originally enacted).*

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3 If the appropriate authority in the exercise of the powers conferred by this Act acquire any interest in or temporarily occupy any lands in which any apparatus is placed, that apparatus shall not be removed under this Part of this Schedule, and any right of the undertakers to maintain, repair, renew or inspect that apparatus in those lands shall not be extinguished, until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers.

4 If—

(a) the appropriate authority, for the purpose of carrying out any work authorised by this Act in, on or under any land, require the removal of any apparatus placed in that land, and give to the undertakers not less than 56 days' written notice of that requirement, together with a plan and section of the proposed work, and of the proposed position of the alternative apparatus to be provided or constructed; or

(b) in consequence of the exercise of any of the powers conferred by this Act, the undertakers reasonably require to remove any apparatus;

the appropriate authority shall afford to the undertakers the necessary facilities and rights for the construction of any necessary alternative apparatus in other land held by the appropriate authority, or in which the appropriate authority have sufficient rights or interests, and thereafter for the maintenance, repair, renewal and inspection of such apparatus:

Provided that, if the alternative apparatus or any part thereof is to be constructed elsewhere than in other land held by the appropriate authority and the appropriate authority are unable to afford such facilities and rights as aforesaid, the undertakers shall, on receipt of a written notice to that effect from the appropriate authority, forthwith use their best endeavours to obtain the necessary facilities and rights.

5 Any alternative apparatus to be constructed in land held by the appropriate authority in pursuance of paragraph 4 above shall be constructed in such manner, and in such line or situation, as may be agreed between the undertakers and the appropriate authority or, in default of agreement, determined by arbitration.

6 The undertakers shall, after the manner of construction and the line and situation of any necessary alternative apparatus have been agreed or determined as aforesaid, and after the grant to the undertakers of any such facilities and rights as are referred to in paragraph 4 above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the appropriate authority to be removed under the provisions of this Part of this Schedule and, in default, the appropriate authority may remove the apparatus.

7 (1) Notwithstanding anything in paragraphs 5 and 6 above, if the appropriate authority give notice in Writing to the undertakers that they desire themselves to carry out 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 be situate in any lands held by the appropriate authority, such work, instead of being carried out by the undertakers, shall be carried out by the appropriate authority with all reasonable dispatch under the superintendence (if given) and to the reasonable satisfaction of the undertakers.

(2) Nothing in this paragraph shall authorise the appropriate authority to carry out the placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or to carry out any filling around the apparatus extending (where the apparatus is laid in a trench) within 300 millimetres above the apparatus.

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- 8 (1) Where, in accordance with the provisions of this Part of this Schedule, the appropriate authority afford to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection on land held by the appropriate authority of alternative apparatus, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the appropriate authority and the undertakers or, in default of agreement, determined by arbitration.
- (2) In determining such terms and conditions as aforesaid in respect of alternative apparatus to be constructed across or along any works authorised by this Act the arbitrator shall—
- (a) give effect to all reasonable requirements of the appropriate authority for ensuring the safety and efficient operation of those works 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 appropriate authority or the use of the same; and
  - (b) so far as it may be reasonable and practicable to do so in the circumstances of the case, give effect to the terms and conditions (if any) applicable to the apparatus for which the alternative apparatus is to be substituted.
- (3) If the facilities and rights to be afforded by the appropriate authority 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, more or less favourable on the whole to the undertakers than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbitrator shall make such provision for the payment of compensation to or by the appropriate authority by or to the undertakers in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the case.
- 9 (1) Not less than 56 days before commencing to carry out any work authorised by this Act which is near to, or will or may affect, any apparatus the removal of which has not been required by the appropriate authority under paragraph 4 above, the appropriate authority shall submit to the undertakers a plan, section and description of the work to be carried out
- (2) The work shall be carried out in accordance with the plan, section and description submitted as aforesaid and in accordance with such reasonable requirements as may be made by the undertakers for the alteration or otherwise for the protection of the apparatus, or for securing access thereto, and the undertakers shall be entitled by their officer to watch and inspect the carrying out of the work.
- (3) If the undertakers, within 28 days after the submission to them of any such plan, section and description, shall, in consequence of the work proposed by the appropriate authority, reasonably require the removal of any apparatus and give written notice to the appropriate authority of that requirement, the foregoing provisions of this Part of this Schedule shall have effect as if the removal of such apparatus had been required by the appropriate authority under paragraph 4 above.
- (4) Nothing in sub-paragraphs (1) to (3) above shall preclude the appropriate authority from submitting at any time, or from time to time, but in no case less than 28 days before commencing to carry out the work, a new plan, section and description thereof instead of the plan, section and description previously submitted, and thereupon the provisions of those sub-paragraphs shall apply to, and in respect of, that new plan, section and description.

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- (5) The appropriate authority shall not be required to comply with sub-paragraphs (1) to (3) above in a case of emergency but in such a case they shall give notice to the undertakers so soon as reasonably practicable and a plan, section and description of the works so soon as reasonably practicable thereafter, and shall otherwise comply with those sub-paragraphs so far as reasonably practicable in the circumstances.
- 10 If in consequence of the exercise of the powers of this Act the access to any apparatus is materially obstructed the appropriate authority shall, so far as reasonably practicable, provide alternative means of access to such apparatus.
- 11 Where, in consequence of this Act, any part of any highway in which any apparatus is situate ceases to be part of a highway, the undertakers may exercise the same rights of access to such apparatus as they enjoyed immediately before the passing of this Act, but nothing in this paragraph shall prejudice or affect any right of the appropriate authority or of the undertakers to require removal of that apparatus under this Part of this Schedule or the power of the appropriate authority to carry out works in accordance with paragraph 9 above.
- 12 (1) Subject to sub-paragraph (2) below, the appropriate authority shall repay to the undertakers the reasonable expenses incurred by the undertakers in, or in connection with—
- (a) the removal and relaying or replacing, alteration or protection of any apparatus or the provision and construction of any new apparatus under any of the provisions of this Part of this Schedule;
  - (b) the cutting off of any apparatus from any other apparatus; and
  - (c) any other work or thing rendered reasonably necessary in consequence of the exercise by the appropriate authority of any of the powers of this Act.
- (2) Section 23(3) and (4) of the Public Utilities Street Works Act 1950 (limitations on undertakers' right to payments) shall, so far as applicable, apply to any payment to be made by the appropriate authority under sub-paragraph (1) above as if the works or operations mentioned in that sub-paragraph were such undertakers' works as are referred to in the said subsection (3), and as if in that subsection for the words "specified as so necessary in a specification of the works settled under Part I of the Fourth Schedule to this Act or agreed so to be by the promoting authority" there were substituted the words "agreed or determined by arbitration under Part VI of Schedule 7 to the Channel Tunnel Act 1987".
- 13 (1) Subject to sub-paragraphs (2) and (3) below, if by reason or in consequence of the construction of any of the works authorised by this Act, or any subsidence resulting from any of those works, any damage to any 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 the undertakers, or any interruption in the supply of electricity, gas or water (as the case may be) by the undertakers or, in the case of the Central Electricity Generating Board, by or to that board, shall be caused, the appropriate authority shall bear and pay the cost reasonably incurred by the undertakers in making good such damage or restoring the supply and shall—
- (a) make reasonable compensation to the undertakers for loss sustained by them; and
  - (b) indemnify the undertakers against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, the undertakers;
- by reason or in consequence of any such damage or interruption.

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- (2) Nothing in sub-paragraph (1) above shall impose any liability on the appropriate authority with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of the undertakers, their officers, servants, contractors or agents.
- (3) The undertakers shall give to the appropriate authority reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the appropriate authority.
- 14 The appropriate authority shall, so far as is reasonably practicable, so exercise their powers under paragraph 15 of Schedule 2 above as not to obstruct or render less convenient the access to any apparatus.
- 15 Notwithstanding the temporary stopping up or diversion of any highway under paragraph 22 of Schedule 2 above, the undertakers 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 to enable them to inspect, repair, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in that highway.
- 16 Nothing in this Part of this Schedule shall prejudice or affect the provisions of any enactment or agreement regulating the relations between the appropriate authority and the undertakers in respect of any apparatus in land held by the appropriate authority at the commencement of this Act.
- 17 (1) Any difference arising between the appropriate authority and the undertakers under this Part of this Schedule shall be determined by arbitration.
- (2) In determining any such difference the arbitrator may, if he thinks fit, require the appropriate authority to carry out any temporary or other works so as to avoid, so far as may be reasonably possible, interference with the use of any apparatus.