

SCHEDULES

SCHEDULE 12

Article 34

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF HIGHWAY AUTHORITIES

1. Unless otherwise agreed in writing between the undertaker and the highway authority concerned, the following provisions of this Schedule have effect in relation to any highway for which the undertaker is not the highway authority.

2. In this Schedule—

“highway” means a street vested in or maintainable by the highway authority; and

“plans” includes sections, drawings, specifications and particulars (including descriptions of methods of construction).

3. Wherever in this Schedule provision is made with respect to the approval or consent of the highway authority, that approval or consent must be given in writing and may be given subject to such reasonable terms and conditions as the highway authority may impose but must not be unreasonably withheld.

4. Before commencing any part of the authorised development the undertaker must submit to the highway authority for its approval in writing proper and sufficient plans and must not commence that part of the authorised development until those plans have been approved or settled by arbitration in accordance with article 37 (arbitration).

5. If, within 21 days after any plans have been submitted to a highway authority under paragraph 4, it has not intimated its disapproval and the grounds of disapproval, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency standards.

6. In the event of any disapproval of plans by a highway authority under paragraph 4, the undertaker may re-submit the plans with modifications and, in that event, if the highway authority has not intimated its disapproval and the grounds of disapproval within 21 days of the plans being re-submitted, it is to be deemed to have approved them except to the extent that the plans involve departures from Highways Agency and local highway authority standards.

7. Except in an emergency or where reasonably necessary to secure the safety of the public, no direction or instruction is to be given by the highway authority to the contractors, servants or agents of the undertaker regarding construction of the authorised development without the prior consent in writing of the undertaker but the highway authority is not be liable for any additional costs which may be incurred as a result of the giving of instructions or directions under this paragraph.

8. To facilitate liaison with the undertaker, the highway authority concerned must provide so far as is reasonably practicable a representative to attend meetings arranged by the undertaker about the authorised development.

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9. The authorised development must be completed in accordance with the reasonable requirements of the highway authority or, in case of difference between the undertaker and the highway authority as to whether those requirements have been complied with or as to their reasonableness, in accordance with such requirements as may be approved or settled by arbitration in accordance with article 37.

PART 2

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application and interpretation

10.—(1) For the protection of the statutory undertakers referred to in this Part of this Schedule the following provisions, unless otherwise agreed in writing between the undertaker and the statutory undertaker concerned, have effect.

(2) In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989⁽¹⁾), belonging to or maintained by that statutory undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker, mains, pipes and other apparatus belonging to or maintained by the undertaker for the purposes of water supply; and
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991⁽²⁾; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“emergency works” has the same meaning as in section 52 of the 1991 Act;

“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, across, along or upon land;

“plans” includes sections and method statements;

“undertaker” means the undertaker as defined in article 2 (interpretation); and

(1) 1989 c. 29.

(2) 1991 c. 56.

“statutory undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽³⁾;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and,
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the statutory undertaker to whom it belongs or by whom it is maintained.

(3) Except in the case of paragraph 11, this Part of this Schedule does not apply to anything done or proposed to be done in relation to or affecting any apparatus in so far as the relations between the undertaker and the statutory undertaker are regulated by the provisions of Part 3 of the 1991 Act.

(4) Article 28 (apparatus and rights of statutory undertakers in stopped up streets) does not apply in relation to a statutory undertaker referred to in this Part of this Schedule.

(5) Paragraphs (1) and (2) of article 29 (recovery of costs of new connections) have effect as if it referred to apparatus removed under this Part of this Schedule.

Apparatus of statutory undertakers in stopped up streets

11.—(1) Where any street is stopped up under article 13 (permanent stopping up of streets), any statutory undertaker whose apparatus is under, in, on, along or across the street is to have the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up but nothing in this sub-paragraph affects any right of the undertaker or of the statutory undertaker to require the removal of that apparatus under paragraph 13 or the power of the undertaker to carry out works under paragraph 15.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 14 (temporary stopping up of streets), and subject always to the power of the undertaker to make provisions for the alteration of such apparatus, the statutory undertaker is at liberty at all times and after giving reasonable notice except in the case of emergency to take all necessary access and 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 inspect, repair, maintain, renew, alter, remove or use any apparatus which at the time of the temporary stopping up or diversion was in that highway.

Acquisition of Apparatus

12. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire under this Order any apparatus or rights or interests of the statutory undertaker to access, maintain or otherwise assert their rights in relation to such apparatus otherwise than by agreement.

Removal of apparatus

13.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of a statutory undertaker to use, maintain, repair, renew, alter or inspect that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker in question, and the provisions of sub paragraph to (5) apply in relation to such works.

(3) 1986 c. 44. A new section 7 was substituted by section 5 of the Gas Act 1995 (c. 45), and was further amended by section 76 of the Utilities Act 2000 (c. 27).

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(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to the statutory 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 conferred by this Order a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the use, maintenance, repair, renewal, alteration and inspection of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker 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 statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonably necessary to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, but such obligation does not extend to the requirement for the statutory undertaker to use its compulsory purchase powers to achieve this end.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(5) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 37, and subject to the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the statutory undertaker in question, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of, the statutory undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker 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 300 millimetres of the apparatus.

Facilities and rights for alternative apparatus

14.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory undertaker facilities and rights for the construction, use, maintenance, renewal and inspection in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 37 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development 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 undertaker or the traffic on the highway; 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.

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

Retained apparatus: protection

15.—(1) Not less than 28 days before commencing the execution of any works authorised by this Order that are near to or will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 13(2), the undertaker must submit to the statutory undertaker in question a plan of the works to be executed.

(2) Those works are to be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a statutory undertaker under sub-paragraph (2) must be made within 21 days after the submission to them of a plan, section and description under sub-paragraph (1).

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 10 to 14 apply as if the removal of the apparatus had been required by the undertaker under paragraph 13(2).

(5) Nothing in this paragraph precludes the undertaker 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 instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan of those works subsequently and must comply with sub-paragraph (2) so far as reasonably practicable in the circumstances.

Expenses

16.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker reasonable expenses incurred by that statutory undertaker in, or in connection with—

(a) the inspection, removal and relaying or replacing, or alteration or protection of any apparatus or the construction of any new or alternative apparatus or connections to apparatus which may be required in consequence of the execution of any such works as are required under this Part of this Schedule, including any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus;

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- (b) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
 - (c) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Part of this Schedule.
- (2) There is to be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule, 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, except where this has been solely due to using the nearest currently available type; 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 not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 37 (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 statutory undertaker in question by virtue of sub-paragraph (1) is to be reduced by the amount of that excess except where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs are to be borne by the undertaker.

- (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.
- (5) An amount which apart from this sub-paragraph would be payable to a statutory undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant to sub paragraph (2)) must, 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 the statutory undertaker 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.

Indemnity

17.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of the authorised development, or any works required under this Schedule by or on behalf of the undertaker, or in consequence of any act or default of the undertaker (or any person employed or authorised by the undertaker) in the course of carrying out such works, any damage is caused 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 other property of a statutory undertaker or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

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- (a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and
- (b) indemnify that statutory undertaker for any other expenses, loss, damages, claims, penalty or costs incurred by or recovered from that statutory undertaker,

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

(2) 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 statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker must give the undertaker reasonable notice of any such claim or demand received under sub-paragraph (1) and no settlement or compromise is to be made without the consent of the undertaker which, if it withholds such consent has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Enactments and agreements

18. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a statutory undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

Co-operation

19. Where in consequence of the proposed construction of any of the authorised development the undertaker or a statutory undertaker requires the removal of apparatus under paragraph 13(2) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 15(2), the undertaker and the statutory undertaker must use their best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and the safe and efficient operation of the statutory undertaker's undertaking.

Access

20. If, in consequence of the exercise of any powers under this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

PART 3

FOR THE PROTECTION OF NATIONAL GRID

Interpretation

21. In this Part of this Schedule—

“National Grid” means National Grid Gas Plc whose registered address is 1-3 Strand, London WC2N 5EH (“National Grid”);

“the high pressure gas main” means the Kinsbourne Green to Dallow Road high pressure gas main; and

“plans” means all drawings, designs, sections, specifications, method statements and other documentation that are reasonably necessary to properly and sufficiently describe the work to be executed.

High pressure gas main: application of Parts 2 and 3

22.—(1) Subject to sub-paragraphs (2) and (3), this Part of this Schedule applies to the high pressure gas main in addition to Part 2.

(2) Paragraph 23 of this Part of this Schedule applies to the high pressure gas main instead of paragraph 15 of Part 2.

(3) Paragraph 23 of this Part of this Schedule (except in the case of paragraph 23(6)) has effect including in circumstances where the high pressure gas main is regulated by the provisions of Part 3 of the 1991 Act, and in those circumstances paragraphs 16 to 20 of Part 2 have effect, except as provided for in paragraph 24 of this Part.

High pressure gas main: protection

23.—(1) Not less than 42 days before commencing the execution of any works authorised by this Order which will or may be situated on, over or under the high pressure gas main, or within 3 metres respectively from the high pressure gas main measured in any direction, or which involve embankment works within 3 metres of the high pressure gas main, the undertaker must submit to National Grid detailed plans describing—

- (a) the exact position of those works;
- (b) the level at which those works are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal; and
- (d) the position of the high pressure gas main.

(2) The undertaker must not commence the construction or renewal of any works to which sub-paragraph (1) applies until National Grid has given written approval of the plans so submitted.

(3) Any approval of National Grid under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (4);
- (b) must not be unreasonably withheld.

(4) In relation to a work to which sub-paragraph (1) applies, National Grid may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to the high pressure gas main.

(5) Works to which this paragraph applies must be executed only in accordance with—

- (a) the plan approved under sub-paragraph (2); and
- (b) such reasonable requirements as may be made in accordance with sub-paragraph (4) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it,

and National Grid is entitled to watch and inspect the execution of those works.

(6) If in consequence of the works proposed by the undertaker National Grid reasonably requires the removal of the high pressure gas main and gives written notice to the undertaker of that requirement, paragraphs 10 to 14 apply as if the removal of the apparatus had been required by the undertaker under paragraph 13(2).

(7) Nothing in this paragraph precludes the undertaker 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, instead of the plan, previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

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(8) The undertaker is not required to comply with sub-paragraph (1) where it needs to carry out emergency works but in that case it must give to National Grid notice as soon as is reasonably practicable and a plan, of those works subsequently and must comply with—

- (a) sub-paragraph (5) so far as reasonably practicable in the circumstances; and
- (b) sub-paragraph (9) at all times.

(9) At all times when carrying out any works authorised under this paragraph the undertaker must comply with National Grid’s policies for safe working in proximity to gas apparatus “Specification for safe working in the vicinity of National Grid high pressure gas pipelines and associated installations requirements for third parties T/SP/SSW27” and HSE’s “HS(G)47 Avoiding danger from underground services”.

Conduct of claims and demands

24.—(1) Sub-paragraph (2) applies instead of paragraph 17(3) of Part 2 in relation to claims and demands made against National Grid under that paragraph.

(2) National Grid must give the undertaker reasonable notice of any such claim or demand received under paragraph 17(1) of Part 2 and no settlement or compromise is to be made without first consulting the undertaker and considering the undertaker’s representations (such representations not to be unreasonably withheld or delayed).