



Aire and Calder Navigation Act 1992

1992 CHAPTER iv

PART IV

PROTECTIVE PROVISIONS

34 For protection of electricity, gas and water undertakers

For the protection of the several undertakers referred to in this section, the following provisions shall, unless otherwise agreed in writing between the Corporation and the undertakers concerned, have effect:—

(1) In this section—

“adequate alternative apparatus” means alternative apparatus adequate to enable the undertakers to fulfil their statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of electricity undertakers, electric lines or electrical plant (as defined in Part I of the Electricity Act 1989) belonging to or maintained by such undertakers; or
- (b) mains, pipes or other apparatus belonging to or maintained by a public gas supplier; or
- (c) mains, pipes or other apparatus belonging to or maintained by a water undertaker for the purposes of water supply;

(not being in any case apparatus in respect of which the relations between the Corporation and the undertakers are regulated by the provisions of Part II of the Public Utilities Street Works Act 1950) and includes any building, structure or works for the lodging therein of 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;

“the undertakers” means any person authorised to carry on an undertaking for the supply of electricity, gas or water within any area within which the

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Corporation are by this Act authorised to purchase land or execute works and, in relation to—

- (a) water undertakers, includes water undertakers in their capacity as undertakers authorised to carry on an undertaking for the supply of water within their area;
 - (b) any apparatus, means the undertakers to whom the apparatus belongs or by whom the apparatus is maintained:
- (2) Notwithstanding the temporary stopping up or diversion of any road or footpath under the powers of section 10 (Temporary stoppage of roads, rivers, etc.) of this Act, the undertakers shall be at liberty at all times to execute and do all such works and things in, upon or under any such road or footpath as may be reasonably necessary or desirable 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 road or footpath:
- (3) Notwithstanding anything in this Act or shown on the deposited plans the Corporation shall not acquire any apparatus under the powers of this Act otherwise than by agreement:
- (4) If the Corporation, in the exercise of the powers of this Act, acquire any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this section and any right of the undertakers to maintain, repair, renew or inspect that apparatus in that land shall not be extinguished until adequate alternative apparatus shall have been constructed and be in operation to the reasonable satisfaction of the undertakers:
- (5) If the Corporation, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Act, require the removal of any apparatus placed in that land, and give to the undertakers not less than 56 days' written notice of such 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 lieu of the apparatus to be removed, or if, in consequence of the exercise of any of the powers of this Act, the undertakers reasonably require to remove any apparatus, the Corporation shall afford to the undertakers the necessary facilities and rights for the construction of such alternative apparatus in other land of the Corporation 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 of the Corporation, and the Corporation are unable to afford such facilities and rights as aforesaid in the land in which the alternative apparatus or such part thereof is to be constructed, the undertakers shall, on receipt of a written notice to that effect from the Corporation, as soon as reasonably practicable use their reasonable endeavours to obtain the necessary facilities and rights in such last-mentioned land:

- (6) (a) Any alternative apparatus to be constructed in land of the Corporation under this section shall be constructed in such manner and in such line or situation as may be agreed between the undertakers and the Corporation or in default of agreement determined by arbitration;
- (b) The undertakers shall, after the alternative apparatus to be provided or constructed has been agreed or determined by arbitration as aforesaid and after the grant to the undertakers of any such facilities and rights as are referred to in paragraph (5) above, proceed with all reasonable dispatch to construct and

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bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Corporation to be removed under the provisions of this section:

- (7) Notwithstanding anything in paragraph (6) above, if the Corporation give notice in writing to the undertakers that they desire themselves 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 be situate in any land of the Corporation, such work, in lieu of being executed by the undertakers, shall be executed by the Corporation with all reasonable dispatch under the superintendence, if given, and to the reasonable satisfaction of the undertakers:

Provided that nothing in this paragraph shall authorise the Corporation to execute the actual placing, installation, bedding, packing, removal, connection or disconnection of any apparatus or any filling around any apparatus extending (where the apparatus is laid in a trench) to 600 millimetres above the apparatus:

- (8) Where, in accordance with the provisions of this section, the Corporation afford to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection in land of the Corporation 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 Corporation and the undertakers or in default of agreement determined by arbitration:

Provided that—

- (a) in determining such terms and conditions as aforesaid in respect of alternative apparatus to be constructed in or along the navigation or the river the arbitrator shall—
- (i) give effect to all reasonable requirements of the Corporation for ensuring the safety and efficient operation of the navigation or the river and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works or the traffic on the navigation or the river; and
 - (ii) 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 applicable to the apparatus, if any, constructed in or along the navigation or the river for which the alternative apparatus is to be substituted;
- (b) if the facilities and rights to be afforded by the Corporation 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 undertakers than the facilities and rights enjoyed by them 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 Corporation to the undertakers in respect thereof as appears to him to be reasonable having regard to all the circumstances of the particular case:
- (9) (a) Not less than 56 days before commencing to execute any such works as are referred to in paragraph (5) above and are near to or will or may affect any apparatus the removal of which has not been required by the Corporation under the said paragraph (5), the Corporation shall submit to the undertakers a plan, section and description of the works to be executed;

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- (b) Such works shall be executed only 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 execution of such works:

Provided that—

- (i) if the undertakers within 42 days after the submission to them of any such plan, section and description, in consequence of the works proposed by the Corporation, reasonably require the removal of any apparatus and give written notice to the Corporation of such requirement, the foregoing provisions of this section shall have effect as if the removal of such apparatus had been required by the Corporation under the said paragraph (5);
 - (ii) nothing in this sub-paragraph shall preclude the Corporation from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any such works, a new plan, section and description thereof in lieu of the plan, section and description previously submitted, and thereupon the provisions of this paragraph shall apply to and in respect of such new plan, section and description;
 - (c) The Corporation shall not be required to comply with sub-paragraph (a) above in a case of emergency but in such a case they shall give to the undertakers notice as soon as reasonably practicable and a plan, section and description of the works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (b) above so far as reasonably practicable in the circumstances;
 - (d) If in consequence of the exercise of the powers of this Act the access to any apparatus is materially obstructed the Corporation shall provide adequate alternative means of access to such apparatus:
- (10) Where, in consequence of this Act, any part of any street, road or footpath in which any apparatus is situate ceases to be part of a street, road or footpath, 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 Corporation or of the undertakers to require removal of such apparatus under this section or the power of the Corporation to execute works in accordance with paragraph (9) above:
- (11) The Corporation shall pay to the undertakers the costs, charges and expenses reasonably incurred by the undertakers 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) above, less the value of any apparatus removed under the provisions of this section (such value being calculated after removal) and shall also make compensation to the undertakers—
- (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 section); and
 - (b) for any other expenses, loss, damages, penalty or costs incurred by the undertakers;

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in consequence of the execution, maintenance, user or failure of any such works or otherwise in consequence of the exercise by the Corporation of the powers of this Act:

- (12) Where, in consequence of the stopping up of any street, road or footpath under the powers of this Act, any apparatus belonging to the undertakers and laid or placed in such street, road or footpath or elsewhere is rendered derelict or unnecessary, the Corporation shall pay to the undertakers the then value of such apparatus (which shall thereupon become the property of the Corporation) 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 or in consequence of such apparatus being so rendered derelict or unnecessary:

Provided that the Corporation shall not under the provisions of this paragraph be required to pay to the undertakers the value of any apparatus rendered derelict or unnecessary if, to the reasonable satisfaction of the undertakers, other apparatus has at the expense of the Corporation been provided and laid and made ready for use in substitution for the apparatus so rendered derelict or unnecessary:

- (13) Any difference arising between the Corporation and the undertakers under this section shall be determined by arbitration:
- (14) Nothing in this section shall affect the provisions of any enactment or agreement regulating the relations between the Corporation and the undertakers in respect of any apparatus laid or erected in land belonging to the Corporation at the date of the passing of this Act.