

## SCHEDULES

### SCHEDULE 3

#### OTHER POWERS ETC., OF LICENCE HOLDERS

##### *Interpretation*

**1.—(1)** In this Schedule—

“controlled works” means any such works as are mentioned in paragraph 2(1) being works done under the right conferred by that paragraph;

“electrical plant” and “electric line” have the same meaning as in the Electricity (Northern Ireland) Order 1992;

“electricity licence holder” means the holder of a licence granted under Article 10 of the Electricity (Northern Ireland) Order 1992;

“emergency works” means—

- (a) in relation to a licence holder, work arising from faults in any gas apparatus;
- (b) in relation to an electricity licence holder for the purpose of paragraph 4, work arising from faults in any electric lines or electrical plant;
- (c) in relation to a government department for the purpose of paragraph 4, work requisite to put an end to, or prevent, the arising of circumstances which are likely to cause—
  - (i) danger to persons or property, or
  - (ii) interference with the exercise of any functions conferred on that department;
- (d) in relation to<sup>[F1]</sup> an electronic communications code operator] for the purpose of paragraph 4, work requisite to put an end to, or prevent, the arising of circumstances which are likely to cause—
  - (i) danger to persons or property, or
  - (ii) the interruption of any service provided by the<sup>[F1]</sup> electronic communications network] of the operator;

“gas apparatus” means—

- (a) pipes and other conduits for the conveyance of gas;
- (b) pressure governors, ventilators and other apparatus used for, or in connection with, the conveyance or supply of gas;

“in”, in a context referring to works or apparatus in a street or land, includes a reference to works or apparatus under, over, across, along or upon it;

“plan” includes section;

“planning permission” means planning permission under Part IV of the Planning (Northern Ireland) Order 1991;

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“sewer” means a sewer as defined in the Water and Sewerage Services (Northern Ireland) Order [<sup>F3</sup>2006];

“street” has the same meaning as in the Street Works (Northern Ireland) Order 1995;

[<sup>F4</sup>“telecommunication apparatus” and “[<sup>F5</sup>“electronic communications network]” have the same meaning as in the Telecommunications Act 1984; ]

(2) In this Schedule, references to the alteration of any apparatus include references to the moving, removal or replacement of the apparatus.

(3) References in this Schedule to arbitration are to arbitration by an arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.

<b>F1</b>	2003 c. 21
<b>F2</b>	Sch. 3 para. 1(1): definition of "public telecommunications operator" repealed (25.7.2003 for specified purposes, 29.12.2003 for specified purposes, otherwise prosp.) by <a href="#">Communications Act 2003 (c. 21)</a> , s. 411(2), <a href="#">Sch. 19</a> (with <a href="#">Sch. 18</a> ); S.I. 2003/1900, art. 2(1), <a href="#">Sch. 1</a> (with art. 3(1)); S.I. 2003/3142, <a href="#">art. 3(2)</a>
<b>F3</b>	Words in Sch. 3 para. 1(1) substituted (1.4.2007) by <a href="#">The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21))</a> , art. 1(2), <a href="#">Sch. 12 para. 36(a)</a> (with arts. 8(8), 121(3), 307; S.R. 2007/194, art. 2(2), <a href="#">Sch. 1 Pt. 2</a> (with <a href="#">Sch. 2</a> ))
<b>F4</b>	Sch. 3 para. 1(1): definition of "telecommunications apparatus" and "telecommunications system" repealed (25.7.2003 for specified purposes, 29.12.2003 for specified purposes, otherwise prosp.) by <a href="#">Communications Act 2003 (c. 21)</a> , s. 411(2), <a href="#">Sch. 19</a> (with <a href="#">Sch. 18</a> ); S.I. 2003/1900, art. 2(1), <a href="#">Sch. 1</a> (with art. 3(1)); S.I. 2003/3142, <a href="#">art. 3(2)</a>
<b>F5</b>	Sch. 3 para. 1(1): definition of "electronic communications network" subst. by (25.7.2003 for specified purposes, 29.12.2003 for specified purposes, otherwise prosp.) by <a href="#">Communications Act 2003 (c. 21)</a> , s. 411(2), <a href="#">Sch. 17 para. 142(2)(b)</a> (with <a href="#">Sch. 18</a> ); S.I. 2003/1900, art. 2(1), <a href="#">Sch. 1</a> (with art. 3(1)); S.I. 2003/3142, <a href="#">art. 3(2)</a>
<b>F6</b>	Sch. 3 para. 1(1): definition of "telecommunications code" repealed (25.7.2003 for specified purposes, 29.12.2003 for specified purposes, otherwise prosp.) by <a href="#">Communications Act 2003 (c. 21)</a> , s. 411(2), <a href="#">Sch. 19</a> (with <a href="#">Sch. 18</a> ); S.I. 2003/1900, art. 2(1), <a href="#">Sch. 1</a> (with art. 3(1)); S.I. 2003/3142, <a href="#">art. 3(2)</a>

### *Works involving breaking up streets*

2.—(1) Subject to the Street Works (Northern Ireland) Order 1995 and to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—

- (a) the following kinds of works, that is to say, installing in any street and inspecting, maintaining, adjusting, repairing or altering—
  - (i) any gas apparatus; and
  - (ii) any structures for housing or covering any such apparatus; and
- (b) any works requisite for or incidental to the purposes of any works falling within head (a), including for those purposes—
  - (i) opening or breaking up any street or any sewers, drains or tunnels in any street;
  - (ii) tunnelling or boring in any street; and
  - (iii) removing or using all earth and materials in any street.

(2) Nothing in this paragraph shall empower a licence holder to lay down or place any gas apparatus into, through or against any building, or in any land not dedicated to the public use, without the consent of the owners and occupiers thereof; but a licence holder may alter, repair or replace any

existing apparatus in any land where the apparatus has been placed under this Order or any other statutory provision.

*Alteration of apparatus, etc., under streets*

3.—(1) Subject to sub-paragraph (2), a licence holder may, subject to and in accordance with the provisions of this paragraph unless otherwise agreed upon between the parties, alter the position of—

- (a) any gas apparatus under the control of another licence holder;
- (b) any electric line or electrical plant under the control of an electricity licence holder;
- [<sup>F7</sup>(bb) any relevant pipe (within the meaning of Article 219 of the Water and Sewerage Services (Northern Ireland) Order 2006) which is under the control of a water undertaker or a sewerage undertaker]
- (c) any [<sup>F8</sup>electronic communications apparatus] used for the purposes of [<sup>F8</sup>an electronic communications network] which is operated by a person to whom the [<sup>F8</sup>electronic communications code] applies; or
- (d) any other apparatus [<sup>F9</sup>(except any pipe forming part of any sewer)],

in any street which interferes with the exercise of his powers under this Schedule.

(2) In the case of an alteration under this paragraph of any [<sup>F8</sup>electronic communications apparatus] used for the purposes of [<sup>F8</sup>an electronic communications network] which is operated by a person to whom the [<sup>F8</sup>electronic communications code] applies, paragraph 23 of the [<sup>F8</sup>electronic communications code] shall apply instead of sub-paragraphs (3) to (13).

(3) One month before commencing the alterations, except where the alterations are emergency works, the licence holder shall—

- (a) serve a notice on the person for the time being entitled to the gas apparatus, electric line, electrical plant [<sup>F10</sup>, pipe], [<sup>F8</sup>electronic communications apparatus] or other apparatus (in this paragraph referred to as “the owners”) describing the proposed alterations; and
- (b) give any further information required by the owners.

(4) The notice mentioned in sub-paragraph (3) shall contain a plan showing the manner in which it is intended that the alterations shall be made.

(5) Within 3 weeks from the service of the notice mentioned in sub-paragraph (3) upon any owners, the owners may require, by requisition served on the licence holder, that any question arising upon the notice as to the works, or to compensation in respect thereof, or any other question shall, in default of agreement, be determined by arbitration.

(6) Where—

- (a) no requisition is served on the licence holder; or
- (b) after any requisition has been served, any question required to be determined by arbitration has been so determined,

the licence holder may, upon paying or securing any compensation which he may be required to pay or secure, carry out the alterations specified in the notice, but subject in all respects to the provisions of this Schedule, and only in accordance with the notice served by him or such modifications thereof as may have been determined by arbitration, or as may be agreed upon between the parties.

(7) At any time before the licence holder is entitled to commence any such alterations, the owners may serve a notice on the licence holder, stating that they desire to execute the alterations, and where any such notice has been served on the licence holder, he shall not be entitled to execute the alterations, except—

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- (a) where the licence holder has required the owners to execute the alterations, and the owners have refused or neglected to comply; or
- (b) where the alterations are emergency works.

(8) Where a notice such as is mentioned in sub-paragraph (7) has been served on the licence holder, he shall, not more than 48 hours and not less than 24 hours before the execution of the alterations is required to be commenced, serve on the owners a requisition stating the time when the alterations are required to be commenced, and the manner in which the alterations are required to be made.

(9) Upon receipt of any requisition, the owners may execute the alterations as required by the licence holder, subject to the restrictions and conditions, so far as they are applicable, to which the licence holder would be subject in executing the alterations.

(10) If the owners decline or, for 24 hours after the time when any such alterations are required to be commenced, neglect to comply with the requisition, the licence holder may execute the alterations in like manner as he might have done if notice had not been served on him under sub-paragraph (7) by the owners.

(11) Where any alterations are emergency works the licence holder may execute them without serving any requisition on the owners; but in that case the licence holder shall, within 24 hours after commencing to execute the alterations, give notice thereof to the owners.

(12) All expenses properly incurred by any owners in complying with any requisition of the licence holder under sub-paragraph (8) shall be a debt recoverable summarily by them from the licence holder.

(13) If the licence holder commences the execution of any work in contravention of sub-paragraph (3)(a), he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

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| <b>F7</b>  | Sch. 3 para. 3(1)(bb) inserted (1.4.2007) by <a href="#">The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21))</a> , art. 1(2), <b>Sch. 12 para. 36(b)</b> (with arts. 8(8), 121(3), 307; S.R. 2007/194, art. 2(2), Sch. 1 Pt. 2 (with <b>Sch. 2</b> ))                                                            |
| <b>F8</b>  | 2003 c. 21                                                                                                                                                                                                                                                                                                                                            |
| <b>F9</b>  | By <a href="#">The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21))</a> , art. 1(2), <b>Sch. 12 para. 36(a)</b> (with arts. 8(8), 121(3), 307; S.R. 2007/194, art. 2(2), Sch. 1 Pt. 2 (with <b>Sch. 2</b> )), it is provided (1.4.2007) that in Sch. 3 "in paragraph 3(1)(c), the words in brackets" are repealed |
| <b>F10</b> | Words in Sch. 3 para. 3(3)(a) inserted (1.4.2007) by <a href="#">The Water and Sewerage Services (Northern Ireland) Order 2006 (S.I. 2006/3336 (N.I. 21))</a> , art. 1(2), <b>Sch. 12 para. 36(c)</b> (with arts. 8(8), 121(3), 307; S.R. 2007/194, art. 2(2), Sch. 1 Pt. 2 (with <b>Sch. 2</b> ))                                                    |

#### *Alteration of gas apparatus under streets*

4.—(1) An electricity licence holder, government department,<sup>[F11]</sup> electronic communications code operator], or other person (not being another licence holder) authorised under any statutory provision to exercise functions in relation to a street may, subject to and in accordance with the provisions of this paragraph unless otherwise agreed upon between the parties, alter the position of any gas apparatus under the control of a licence holder under that street which interferes with the exercise of those functions.

(2) Sub-paragraphs (3) to (12) of paragraph 3 shall apply for the purposes of sub-paragraph (1) of this paragraph as if—

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- (a) any reference to the licence holder were a reference to the electricity licence holder, government department,<sup>[F11]</sup> electronic communications code operator] or other person, as the case may require; and
  - (b) any reference to the owners were a reference to the licence holder.
- (3) If the electricity licence holder,<sup>[F11]</sup> electronic communications code operator] or, as the case may be, the other person commences the execution of any work in contravention of paragraph 3(3) (a) as applied by sub-paragraph (2) of this paragraph, he shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**F11** 2003 c. 21

#### *Controlled works in a street near to apparatus*

5.—(1) The following provisions of this paragraph apply where a licence holder requires to carry out any controlled works in a street near to—

- (a) any gas apparatus of any other licence holder;
- (b) any electric lines or electrical plant of any electricity licence holder; or
- (c) any<sup>[F12]</sup> electronic communications apparatus] which is operated by a person to whom the<sup>[F13]</sup> electronic communications code] applies; or
- (d) any other apparatus belonging to or under the jurisdiction or control of a government department or other person (not being a licence holder).

(2) Where the licence holder finds it necessary to undermine but not alter the position of any gas apparatus, electric line, electrical plant,<sup>[F13]</sup> electronic communications apparatus] or other apparatus he shall temporarily support it in position during the execution of the works, and before completion provide a suitable and proper foundation for it where so undermined.

(3) Any question arising under this paragraph shall, in default of agreement, be determined by arbitration.

**F12** fully exercised by SR 1996/216

**F13** 2003 c. 21

#### *Works in a street near to gas apparatus*

6.—(1) The following provisions of this paragraph apply where an electricity licence holder, government department,<sup>[F14]</sup> electronic communications code operator] or other person (not being a licence holder) requires to carry out any works in a street for laying down or constructing any electrical plant or electric lines or any<sup>[F14]</sup> electronic communications apparatus] or other apparatus near to any gas apparatus of a licence holder.

(2) Where the electricity licence holder, government department,<sup>[F14]</sup> electronic communications code operator] or other person finds it necessary to undermine but not alter the position of any gas apparatus he or it shall temporarily support the apparatus in position during the execution of the works, and before completion provide a suitable and proper foundation for it where so undermined.

(3) Where the electricity licence holder, government department,<sup>[F14]</sup> electronic communications code operator] or other person lays any electric line crossing or liable to touch any gas apparatus belonging to the licence holder, the conducting portion of the electric line shall be effectively insulated in a manner approved by the Department, and the electricity licence holder, government

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department, [F14 electronic communications code operator] or other person shall not, except with the consent of the licence holder and the Department—

- (a) lay the electric lines so as to come into contact with the gas apparatus; or
- (b) use the gas apparatus in connection with the supply of electricity.

(4) Any question arising under this paragraph shall, in default of agreement, be determined by arbitration.

F14 2003 c. 21

#### *Emergency works*

7.—(1) Where any person would be required to serve any notice in respect of any works under paragraph 3 or 4 if the works were not emergency works, that person shall serve a notice in respect of the emergency works as soon as practicable after commencing the works.

(2) Failure to serve the notice required by sub-paragraph (1) shall be treated as a contravention of a requirement of the paragraph under which a notice would be required if the works were not emergency works.

#### *Protection from interference*

8.—(1) Subject to sub-paragraph (2), a licence holder who carries out any controlled works shall take all reasonable precautions for securing that those works do not interfere with the operation of any [F15 electronic communications apparatus] which—

- (a) is under the control of a person to whom the [F15 electronic communications code] applies; and
- (b) is not unusually sensitive to interference with its operation.

(2) In the case of any [F15 electronic communications apparatus] which is subsequently installed or altered or whose mode of operation is subsequently changed, the duty imposed by sub-paragraph (1) shall not apply in relation to—

- (a) any momentary interference with its operation; or
- (b) where it is installed in unreasonably close proximity to the gas apparatus, any other interference with its operation.

(3) Subject to sub-paragraph (4), a person to whom the [F15 electronic communications code] applies who installs or alters, or changes the mode of operation of, any [F15 electronic communications apparatus] shall take all reasonable precautions for securing that the operation of that apparatus does not interfere with the operation of any gas apparatus which—

- (a) is under the control of a licence holder; and
- (b) is not unusually sensitive to interference with its operation.

(4) In the case of any gas apparatus which is subsequently installed or altered or whose mode of operation is subsequently changed, the duty imposed by sub-paragraph (3) shall not apply in relation to—

- (a) any momentary interference with its operation; or
- (b) where it is installed in unreasonably close proximity to the [F15 electronic communications apparatus], any other interference with its operation.

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(5) Any difference arising under this paragraph between a licence holder and a person to whom the[F15 electronic communications code] applies shall be determined by arbitration.

(6) In this paragraph “momentary interference” means any interference of momentary duration which is not a regular occurrence (whether caused by physical contact or otherwise).

F15 2003 c. 21

#### *Modification of paragraphs 2 to 8*

9. The provisions of paragraphs 2 to 8 may be modified by regulations.

#### *Acquisition of wayleaves*

10.—(1) This paragraph applies where—

- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to install and keep installed any gas apparatus in any land; and
- (b) the owner or occupier of the land, having been given a notice under sub-paragraph (3),—
  - (i) has failed to give the necessary wayleave before the end of the period specified in that notice; or
  - (ii) has given the wayleave subject to terms and conditions to which the licence holder objects;

and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to install and keep installed the gas apparatus in the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing or altering the apparatus,

(2) This paragraph also applies where—

- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to keep any gas apparatus installed in any land; and
- (b) the owner or occupier of the land has given notice to the licence holder under paragraph 12(2) requiring him to remove the apparatus;

and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to keep the gas apparatus installed in the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing or altering the apparatus.

(3) The notice referred to in sub-paragraph (1)(b) shall—

- (a) state the licence holder's intention to install gas apparatus;
- (b) give a description of the nature of the apparatus and of the position and manner in which it is intended to be installed; and
- (c) require the owner or occupier of the land to give the necessary wayleave within a period (not being less than 21 days) specified in the notice.

(4) Subject to sub-paragraphs (5) to (7), the Department may, on the application of the licence holder, grant the necessary wayleave subject to such terms and conditions as the Department thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.

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(5) The Department shall not grant a wayleave under sub-paragraph (4) in any case where the land in which the apparatus is to be installed is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on.

(6) Sub-paragraph (5) shall not apply to any land in respect of which a wayleave has been granted before the coming into operation of that sub-paragraph.

(7) Before granting a necessary wayleave, the Department shall afford—

- (a) the occupier of the land; and
- (b) where the occupier is not also the owner of the land, the owner,

an opportunity of being heard by a person appointed by the Department.

(8) A necessary wayleave granted under this paragraph shall bind any person who is at any time the owner or occupier of the land.

(9) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for any gas apparatus, he shall be deemed to have an estate in that land for the purposes of section 40 of the Mineral Development Act (Northern Ireland) 1969.

(10) In this paragraph “dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part.

#### *F<sup>16</sup> Assignment of necessary wayleave*

**F16** 2003 NI 6

**10A.**—(1) Subject to the following provisions of this paragraph, a necessary wayleave granted under paragraph 10 shall be capable of being assigned if (and only if)—

- (a) in the case of a wayleave granted after the coming into operation of Article 64 of the Energy (Northern Ireland) Order 2003, a term to that effect is included in the wayleave;
- (b) in the case of a wayleave granted before that time, it is designated by the Department on an application made by the relevant licence holder.

(2) A necessary wayleave shall not be assigned—

- (a) without the consent of the Department; or
- (b) to a person other than a licence holder.

(3) The relevant licence holder shall—

- (a) give notice of an application under sub-paragraph (1)(b) to—
  - (i) the occupier of the land; and
  - (ii) where the occupier is not also the owner of the land, the owner; and

(b) send a copy of that notice to the Department, together with the name and address of each person to whom that notice has been given.

(4) The notice under sub-paragraph (3) shall—

- (a) identify the wayleave and state that an application in respect of it has been made to the Department under sub-paragraph (1)(b); and
- (b) specify a period (not being less than 28 days from the date on which the notice is given) during which representations or objections concerning the application may be made to the Department.

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(5) Before determining whether to designate a wayleave in pursuance of an application under sub-paragraph (1)(b), the Department shall consider any representations or objections which are duly made as mentioned in sub-paragraph (4)(b) and not withdrawn .

(6) The Department shall give notice of its decision on an application under sub-paragraph (1)(b) to—

- (a) the relevant licence holder; and
- (b) each person mentioned in sub-paragraph (3)(b).

(7) In this paragraph—

“assign” includes transfer by any means;

“relevant licence holder”, in relation to a necessary wayleave, means the licence holder to whom the wayleave was granted or to whom it has been assigned.

(8) In paragraphs 11 and 12 references to a licence holder include references to a licence holder to whom a wayleave has been assigned.]

#### *Provisions supplementary to paragraph 10*

**11.—**(1) Where a wayleave is granted to a licence holder under paragraph 10—

- (a) the occupier of the land; and
- (b) where the occupier is not also the owner of the land, the owner,

may recover from the licence holder compensation in respect of the grant.

(2) Where in the exercise of any right conferred by such a wayleave any damage is caused to property, the licence holder shall make good or pay compensation in respect of that damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any property the licence holder shall pay compensation in respect of that disturbance.

(3) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.

#### *Temporary continuation of wayleaves*

**12.—**(1) This paragraph applies where at any time such a wayleave as is mentioned in paragraph 10 (whether granted under that paragraph or by agreement between the parties or otherwise)—

- (a) is determined by the expiration of a period specified in the wayleave;
- (b) is terminated by the owner or occupier of the land in accordance with a term contained in the wayleave; or
- (c) by reason of a change in the ownership or occupation of the land after the granting of the wayleave, ceases to be binding on the owner or occupier of the land.

(2) The owner or occupier of the land may—

- (a) in a case falling within sub-paragraph (1)(a), at any time after or within 3 months before the end of the period specified in the wayleave;
- (b) in a case falling within sub-paragraph (1)(b), at any time after the wayleave has been terminated by him; or
- (c) in a case falling within sub-paragraph (1)(c), at any time after becoming the owner or occupier of the land by virtue of such a change in the ownership or occupation of the land as is mentioned in that sub-paragraph,

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give to the licence holder a notice requiring him to remove the gas apparatus from the land; but the licence holder shall not be obliged to comply with such a notice except in the circumstances and to the extent provided by the following provisions of this paragraph.

(3) Where within the period of 3 months from the date of the notice under sub-paragraph (2) the licence holder makes neither—

- (a) an application for the grant of the necessary wayleave under paragraph 10; nor
- (b) an application for a vesting order under paragraph 1 of Schedule 2 in respect of the land,

the licence holder shall comply with the notice at the end of that period.

(4) Where—

- (a) within the period mentioned in sub-paragraph (3) the licence holder makes an application for the grant of the necessary wayleave under paragraph 10; and
- (b) that application is refused by the Department,

the licence holder shall comply with the notice under sub-paragraph (2) at the end of the period of one month from the date of the Department's decision or such longer period as the Department may specify.

(5) Where—

- (a) within the period mentioned in sub-paragraph (3) the licence holder makes an application for a vesting order under paragraph 1 of Schedule 2 in respect of the land; and
- (b) that order is not made by the Department,

the licence holder shall comply with the notice under sub-paragraph (2) at the end of the period of one month from the date of the Department's decision or such longer period as the Department may specify.

#### *Felling and lopping of trees, etc.*

**13.—**(1) This paragraph applies where any tree is or will be in such close proximity to gas apparatus which is kept installed or is being or is to be installed by a licence holder as—

- (a) to obstruct or interfere with the installation, maintenance or working of the apparatus; or
- (b) to constitute an unacceptable source of danger (whether to children or to other persons);

and in this paragraph “the land” means the land on which the tree is growing.

(2) The licence holder may give notice to the occupier of the land requiring him to fell or lop the tree or cut back its roots so as to prevent it from having the effect mentioned in sub-paragraph (1) (a) or (b), subject to the payment to him by the licence holder of the expenses reasonably incurred by him in complying with the notice.

(3) Where the occupier is not also the owner of the land, a copy of any notice under sub-paragraph (2) shall also be served on the owner.

(4) If within 21 days from the giving of a notice under sub-paragraph 2—

- (a) the requirements of the notice are not complied with; and
- (b) neither the owner nor occupier of the land gives a counter notice under sub-paragraph (5),

the licence holder may cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b).

(5) If, within 21 days from the giving of a notice under sub-paragraph (2), the owner or occupier of the land gives a counter notice to the licence holder objecting to the requirements of the notice, the matter shall, unless the counter notice is withdrawn, be referred to the Department.

**Status:** Point in time view as at 01/04/2007.

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(6) On a reference under sub-paragraph (5), the Department after giving the parties an opportunity of being heard by a person appointed by the Department, may make such order as the Department thinks just, and any such order—

- (a) may empower the licence holder (after giving such notice to any person by whom a counter notice was given of the commencement of the work as the order may direct) to cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b); and
- (b) may determine any question as to what expenses (if any) are to be paid.

(7) Where the licence holder exercises any powers conferred under sub-paragraph (4) or (6), he shall—

- (a) cause trees to be felled or lopped or their roots to be cut back in accordance with good arboricultural practice and so as to do as little damage as possible to trees, fences, hedges and growing crops;
- (b) cause felled trees, lopped boughs or root cuttings to be removed in accordance with the directions of the owner or occupier.

(8) In this paragraph “tree” includes any shrub and references to felling or lopping, felled trees or lopped boughs shall be construed accordingly.

#### *Entry on land for purposes of exploration*

**14.**—(1) Subject to the following provisions of this paragraph and without prejudice to any other right of entry, for the purpose of ascertaining whether the land would be suitable for use for any purpose connected with the carrying on of the activities which the licence holder is authorised by his licence to carry on, a person authorised in writing by a licence holder may, at any reasonable time, enter the land for the purpose of survey and valuation.

(2) A person authorised to enter upon any land under this paragraph shall not demand to do so as of right unless—

- (a) 14 days' notice of the intended entry has been given to the occupier; and
- (b) if required to do so, he has produced evidence of his authority.

(3) The powers conferred by this paragraph shall not be exercisable in relation to—

- (a) land which is covered by a dwelling or will be so covered on the assumption that any planning permission which is in force is acted on; or
- (b) land which is covered by a building (other than a dwelling) or will be so covered on the assumption that any planning permission which is in force is acted on except—
  - (i) with consent given by or on behalf of the occupier of the land; or
  - (ii) where the occupier has refused his consent, with the consent of the Department.

(4) The power to survey land conferred by this paragraph includes power to search and both for the purpose of ascertaining the nature of the subsoil; but works may not be carried out on the land for this purpose unless—

- (a) notice of the proposed works is included in the notice given under sub-paragraph (2); and
- (b) where land is held by statutory undertakers who object to the works on the ground that the carrying out of the works would be seriously detrimental to the carrying on of their undertaking, with the consent of the Department.

(5) Where it is proposed to search or bore in pursuance of this paragraph in a street within the meaning of the Street Works (Northern Ireland) Order 1995—

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- (a) Article 15 of that Order (notice of starting date of works), so far as it requires notice to be given to a person having apparatus in the street which is likely to be affected by the works,
- (b) Article 29 of that Order (requirements to be complied with where works likely to affect another person's apparatus in the street), and
- (c) Article 42 of that Order (liability for damage or loss caused),

have effect in relation to the searching or boring as if they were street works within the meaning of that Order.

(6) In this paragraph—

“building”, except in the definition of “dwelling”, includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with a building;

“dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling;

“statutory undertakers” has the same meaning as in the Planning (Northern Ireland) Order 1991.

*Provisions supplementary to paragraphs 13 and 14*

**15.—(1)** Any person who intentionally obstructs a person acting in the exercise of any power conferred by or under paragraph 13 or 14 shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(2) Where in the exercise of any power conferred by or under paragraph 13 or 14 any damage is caused to property the licence holder shall make good or pay compensation in respect of that damage; and where in consequence of the exercise of such a power a person is disturbed in his enjoyment of any property the licence holder shall pay compensation in respect of that disturbance.

**Status:**

Point in time view as at 01/04/2007.

**Changes to legislation:**

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