

## SCHEDULES

### SCHEDULE 13

#### PROTECTIVE PROVISIONS

#### PART 4

#### FOR THE PROTECTION OF ELECTRICITY SUPPLIERS

**51.** The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the electricity supplier.

**52.** In this Part of this Schedule—

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

“apparatus” means electric lines or electrical plant (as defined in the Electricity Act 1989(1)), belonging to or maintained by the electricity supplier;

“electricity supplier” means any licence holder within the meaning of Part 1 of the Electricity Act 1989 for the area of the authorised development;

“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; and

“plans” include all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

#### *On street apparatus*

**53.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the electricity supplier are regulated by the provisions of Part 3 of the 1991 Act.

#### *Apparatus in temporarily stopped up streets*

**54.** Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 14 (temporary prohibition or restriction of use of streets), an electricity supplier is to be at liberty at all times to take all necessary access across any such stopped up highway 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 maintain any apparatus which at the time of the stopping up or diversion was in that highway.

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(1) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).

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### *Protective works to buildings*

55. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

### *Acquisition of land*

56. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement, such agreement not to be unreasonably withheld or delayed.

### *Removal of apparatus*

57.—(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 or requires that the electricity supplier's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of the electricity supplier to maintain that apparatus in that land is not extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the electricity supplier in accordance with sub-paragraphs (2) to (7).

(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 electricity supplier 28 days' written notice of that requirement, together with a plan 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 the electricity supplier reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the electricity supplier the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance 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 electricity supplier must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(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 electricity supplier and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The electricity supplier must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46, and after the grant to the electricity supplier 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 electricity supplier 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 electricity supplier, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the electricity supplier.

(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*

**58.**—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to the electricity supplier facilities and rights for the construction and maintenance 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 electricity supplier or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) 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 those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the electricity supplier 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 electricity supplier as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

#### *Retained apparatus*

**59.**—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under 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 57(2), the undertaker must submit to the electricity supplier a plan of the works to be executed.

(2) Those works must 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 electricity supplier for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the electricity supplier is entitled to watch and inspect the execution of those works.

(3) Any requirements made by the electricity supplier under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) was submitted to it.

(4) If the electricity supplier 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 51 to 53 and 56 to 58 apply as if the removal of the apparatus had been required by the undertaker under paragraph 57(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 to be required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the electricity supplier notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any apparatus, or involve embankment works within 10 metres of

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any apparatus, the plan to be submitted to the electricity supplier under sub-paragraph (1) must be detailed including a method statement and describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

#### *Expenses and costs*

**60.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the electricity supplier all expenses reasonably incurred by the electricity supplier 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 57(2).

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

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; 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 46 (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 electricity supplier by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an electricity supplier in respect of works by virtue of sub-paragraph (1) 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 electricity supplier 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.

**61.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the authorised development, any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for

the purposes of those works) or property of the electricity supplier, or there is any interruption in any service provided, or in the supply of any goods, by the electricity supplier, the undertaker is to—

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

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

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

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the electricity supplier, its officers, servants, contractors or agents.

(4) An electricity supplier must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker and, if it withholds such consent, it is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

#### *Cooperation*

**62.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or the electricity supplier requires the removal of apparatus under paragraph 57(2) or the electricity supplier makes requirements for the protection or alteration of apparatus under paragraph 59, the undertaker must use its 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 taking into account the need to ensure the safe and efficient operation of the electricity supplier's undertaking and the electricity supplier must use its best endeavours to co-operate with the undertaker for that purpose.