

SCHEDULES

SCHEDULE 13

PROTECTIVE PROVISIONS

PART 6

FOR THE PROTECTION OF ELECTRICITY UNDERTAKERS

Application

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

Commencement Information

I1 Sch. 13 Pt. 6 para. 1 in force at 30.10.2019, see [art. 1](#)

Interpretation

2. In this Part of this Schedule—

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

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

“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;

“plan” includes 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;

“specified work” means so much of any of the authorised development that is carried out within 6 metres of any apparatus; and

“utility undertaker” means any licence holder within the meaning of Part 1 of the Electricity Act 1989 for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

Commencement Information

I2 Sch. 13 Pt. 6 para. 2 in force at 30.10.2019, see [art. 1](#)

(1) 1989 c. 29.

On street apparatus

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

Commencement Information

I3 Sch. 13 Pt. 6 para. 3 in force at 30.10.2019, see [art. 1](#)

Apparatus in stopped up streets

4.—(1) Where any street is stopped up under article 10 (permanent stopping up of streets), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 6 of this Part of this Schedule or the power of the undertaker to carry out works under paragraph 8 of this Part of this Schedule.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 11 (temporary stopping up of streets), a utility undertaker is 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.

Commencement Information

I4 Sch. 13 Pt. 6 para. 4 in force at 30.10.2019, see [art. 1](#)

Acquisition of land

5. 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.

Commencement Information

I5 Sch. 13 Pt. 6 para. 5 in force at 30.10.2019, see [art. 1](#)

Removal of apparatus

6.—(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 utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a utility undertaker to maintain 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 utility undertaker in question in accordance with sub-paragraphs (2) to (6).

(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, the undertaker must give to the utility undertaker in question 60 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 an undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker 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 utility undertaker 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 save that this obligation does not extend to a requirement on the utility undertaker to use its compulsory purchase powers to this end unless the utility undertaker elects to do so.

(4) If, for the purpose of executing any works, the undertaker requires to remove or divert any apparatus placed within the Order land, and alternative apparatus or any part of such alternative apparatus is to be constructed in land other than the Order land as a consequence of the removal or diversion of apparatus, then the undertaker shall use its reasonable endeavours to obtain alternative rights in other land in which the alternative apparatus is to be constructed.

(5) Should the undertaker not be able to obtain the alternative rights required under sub-paragraph (2)(a) then the undertaker and the utility undertaker shall use reasonable endeavours to agree a reasonably practicable and mutually agreeable alternative engineering solution which does not require alternative apparatus to be constructed in land other than Order land and does not require alternative rights.

(6) 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 utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 48 (arbitration).

(7) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 48, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (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.

(8) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker 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 utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

Commencement Information

I6 Sch. 13 Pt. 6 para. 6 in force at 30.10.2019, see [art. 1](#)

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker 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 utility undertaker in question or in default of agreement settled by arbitration in accordance with article 48 (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 utility 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 that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Commencement Information

I7 Sch. 13 Pt. 6 para. 7 in force at 30.10.2019, see [art. 1](#)

Retained apparatus

8.—(1) Not less than 60 days before starting the execution of any specified 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 7(2) of this Part of this Schedule, the undertaker must submit to the utility undertaker in question 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 utility undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 60 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(4) If a utility 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 1 to 3 and 5 to 7 of this Part of this Schedule apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2) of this Part of this Schedule.

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 60 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) in a case of emergency but in that case must give to the utility undertaker in question 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 (3) in so far as is reasonably practicable in the circumstances.

Commencement Information

I8 Sch. 13 Pt. 6 para. 8 in force at 30.10.2019, see [art. 1](#)

Expenses and costs

9. The undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker 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 6(2) of this Part of this Schedule.

Commencement Information

I9 Sch. 13 Pt. 6 para. 9 in force at 30.10.2019, see [art. 1](#)

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraphs 6(2) of this Part of this Schedule, or by reason of any subsidence resulting from such development or works, 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 a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that utility undertaker for any other expenses, loss, damages, penalty or costs incurred by the undertaker, by reason or in consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan approved by a utility undertaker or in accordance with any requirement of a utility 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 a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker 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 who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Commencement Information

I10 Sch. 13 Pt. 6 para. 10 in force at 30.10.2019, see [art. 1](#)

11. At all times when carrying out any works authorised under the Order the undertaker must comply with the utility undertaker’s “Avoidance of Danger from Electricity Overhead Lines and Underground Cables” (2014), the Energy Network Association’s “A Guide to the Safe Use of Mechanical Plant in the Vicinity of Electricity Overhead Lines” (undated), the Health and Safety Executive’s GS6 “Avoiding Danger from Overhead Power Lines” and the Health and Safety Executive’s HSG47 “Avoiding Danger from Underground Services” (Third Addition) (2014) as the same may be replaced from time to time.

Commencement Information

I11 Sch. 13 Pt. 6 para. 11 in force at 30.10.2019, see [art. 1](#)

Changes to legislation: There are currently no known outstanding effects for the The Northampton Gateway Rail Freight Interchange Order 2019, PART 6. (See end of Document for details)

Commencement Information

- I9** Sch. 13 Pt. 6 para. 9 in force at 30.10.2019, see [art. 1](#)
- I10** Sch. 13 Pt. 6 para. 10 in force at 30.10.2019, see [art. 1](#)
- I11** Sch. 13 Pt. 6 para. 11 in force at 30.10.2019, see [art. 1](#)

Co-operation

12. Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal of apparatus under paragraph 6(2) of this Part of this Schedule or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 8 of this Part of this Schedule, the undertaker must use 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 utility undertaker’s undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

Commencement Information

- I12** Sch. 13 Pt. 6 para. 12 in force at 30.10.2019, see [art. 1](#)

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

Commencement Information

- I13** Sch. 13 Pt. 6 para. 13 in force at 30.10.2019, see [art. 1](#)

Commencement Information

- I12** Sch. 13 Pt. 6 para. 12 in force at 30.10.2019, see [art. 1](#)
- I13** Sch. 13 Pt. 6 para. 13 in force at 30.10.2019, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The Northampton Gateway Rail Freight Interchange Order 2019, PART 6.