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SCHEDULES

SCHEDULE 5

PROTECTIVE PROVISIONS

FOR PROTECTION OF ELECTRICITY, GAS AND WATER UNDERTAKERS

- 2 For the protection of the several undertakers referred to in this paragraph, the following provisions shall, unless otherwise agreed in writing between the Corporation and the undertakers concerned, have effect:—
- (1) In this paragraph—
- “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 the Electricity Act 1989) belonging to or maintained by such undertakers; or
 - (b) in the case of gas or water undertakers, any mains, pipes or other apparatus belonging to or maintained by such undertakers; 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 a licence holder under Part I of the Electricity Act 1989, a public gas supplier within the meaning of Part I of the Gas Act 1986 or a water undertaker within the meaning of the Water Industry Act 1991 or any of such bodies; and, in relation to any apparatus, means the undertakers to whom it belongs or by whom it is maintained:
- (2) Notwithstanding the temporary stopping up or diversion of any street under section 18 (Temporary stoppage of streets) 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 street 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 street:
- (3) The Corporation, in the case of the powers conferred by section 23 (Underpinning of houses near works) of this Act, shall, so far as is reasonably practicable, so exercise those powers as not to obstruct or render less convenient the access to any apparatus and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of the undertakers or any interruption in the supply of electricity, gas or water, as the case may be, by the undertakers shall

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be caused, the Corporation shall bear and pay the cost reasonably incurred by the undertakers in making good such damage or restoring the supply; and shall—

- (a) make reasonable compensation to the undertakers for any loss sustained by them; and
- (b) indemnify the undertakers against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by the undertakers;

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

Provided that—

- (i) nothing in this sub-paragraph shall impose any liability on the Corporation with respect to any damage or interruption to the extent that such damage or interruption may be attributable to the act, neglect or default of the undertakers or their contractors or workmen;
 - (ii) the undertakers shall give to the Corporation reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the Corporation:
- (4) Notwithstanding anything in section 24 (Use of sewers, etc., for removing water) of this Act, no use shall be made by the Corporation in the construction of the works of pumping or other like modes of removing water except where reasonably necessary or in case of emergency or unforeseen accident or for the purpose of removing rainwater or other small amounts of water:
 - (5) 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:
 - (6) 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 paragraph 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:
 - (7) 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 shall give to the undertakers 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 shall 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, or 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, forthwith use their best endeavours to obtain the necessary facilities and rights in such last-mentioned land:

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- (8) (a) Any alternative apparatus to be constructed in land of the Corporation under this paragraph 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 shall have 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 sub-paragraph (7) above, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the Corporation to be removed under the provisions of this paragraph:

- (9) Notwithstanding anything in sub-paragraph (8) 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 sub-paragraph shall authorise the Corporation to execute the actual 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:

- (10) Where, in accordance with the provisions of this paragraph, 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 any railways of the Corporation, the arbitrator shall—
- (i) give effect to all reasonable requirements of the Corporation for ensuring the safety and efficient operation of the railway 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 Corporation or the traffic on the railway; 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 railway 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

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respect thereof as appear to him to be reasonable having regard to all the circumstances of the particular case:

- (11) (a) Not less than 28 days before commencing to execute any such works as are referred to in sub-paragraph (7) 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 sub-paragraph (7), the Corporation shall submit to the undertakers a plan, section and description of the works to be executed;
- (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 14 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 paragraph shall have effect as if the removal of such apparatus had been required by the Corporation under the said sub-paragraph (7);
- (ii) nothing in sub-paragraph (11)(b) shall preclude the Corporation from submitting at any time or from time to time, but in no case less than 28 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 sub-paragraph (11)(b) 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 (11) (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 (11)(b) above so far as reasonably practicable in the circumstances:
- (12) Where, in consequence of this Act, any part of any highway in which any apparatus is situate ceases to be part of a highway 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 sub-paragraph shall prejudice or affect any right of the Corporation or of the undertakers to require removal of such apparatus under this paragraph or the power of the Corporation to execute works in accordance with sub-paragraph (11) above:
- (13) Subject to sub-paragraph (14) below 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 sub-paragraph (7) above, less the value of any apparatus removed under the provisions of this paragraph (such value being calculated after removal) and shall also make compensation to the undertakers—

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- (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 paragraph); and
- (b) for any other expenses, loss, damages, penalty or costs incurred by the undertakers;

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

(14) If in pursuance of the provisions of this paragraph—

- (a) alternative apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, or smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type, capacity or dimension, or
- (b) apparatus (whether existing apparatus or alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was,

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 Corporation, or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the execution of works under sub-paragraphs (8) and (9) 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 undertakers by virtue of sub-paragraph (13) above shall be reduced by the amount of that excess:

(15) For the purposes of sub-paragraph (14) above—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not 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 cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole shall be treated as if it also had been agreed or had been so determined:

(16) An amount which apart from this sub-paragraph would be payable to the undertakers in respect of works by virtue of sub-paragraph (13) above (and having regard, where relevant, to sub-paragraph (14) above) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7½ years earlier so as to confer on the undertakers 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 as calculated in accordance with the Code of Practice entitled “Measures Necessary Where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992, and approved by the Secretary of State on 30th June 1992 as revised and reissued from time to time:

(17) Where, in consequence of the stopping up of any highway under the powers of this Act, any apparatus belonging to the undertakers and laid or placed in such highway 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 costs 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 of such apparatus being so rendered derelict or unnecessary:

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Provided that the Corporation shall not under the provisions of this sub-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:

- (18) Any difference arising between the Corporation and the undertakers under this paragraph shall be determined by arbitration:
- (19) Nothing in this paragraph shall be deemed to prejudice or 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:
- (20) Nothing in this paragraph shall apply—
 - (a) in relation to street works (within the meaning of Part III of the New Roads and Street Works Act 1991) executed by the Corporation; or
 - (b) in relation to apparatus in respect of which the relations between the Corporation and the undertakers are regulated by that Part of the Act.