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SCHEDULES

SCHEDULE 13

PROTECTIVE PROVISIONS IN RESPECT OF CERTAIN UNDERTAKINGS

PART I

PROVISIONS APPLYING GENERALLY

General provisions protecting undertakings

- 1 (1) Nothing in this Act conferring power on a relevant undertaker to carry out any works shall confer power to do anything, except with the consent of the persons carrying on an undertaking protected by this paragraph, which, whether directly or indirectly, so interferes or will so interfere—
- (a) with works or property vested in or under the control of the persons carrying on that undertaking, in their capacity as such; or
 - (b) with the use of any such works or property,
- as to affect injuriously those works or that property or the carrying on of that undertaking.
- (2) Without prejudice to the construction of sub-paragraph (1) above for the purposes of its application in relation to the other provisions of this Act, that sub-paragraph shall have effect in its application in relation to the relevant sewerage provisions as if any use of, injury to or interference with any sluices, floodgates, sewers, groynes, sea defences or other works which are vested in or under the control of [^{F1}the Environment Agency] or an internal drainage board were such an interference with works or property vested in or under the control of [^{F1}the Environment Agency] or that board as to affect injuriously the works or property or the carrying on of the undertaking of [^{F1}the Environment Agency] or of that board.
- (3) A consent for the purposes of sub-paragraph (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (4) Subject to the following provisions of this Schedule, any dispute—
- (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in sub-paragraph (1) above;
 - (b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or
 - (c) as to whether any condition subject to which any such consent has been given was reasonable,
- shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

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- (5) The following are the undertakings protected by this paragraph, that is to say-
- (a) the undertakings of [^{F1}the Environment Agency], the Civil Aviation Authority, [^{F2}the Coal Authority] and [^{F3}a universal service provider (so far as it is the provider’s undertaking in relation to the provision of a universal postal service)];
 - (b) the undertaking of any relevant undertaker;
 - [^{F4}(c) any undertaking consisting in the provision of an electronic communications network;]
 - (d) any airport to which Part V of the ^{M1}Airports Act 1986 applies;
 - (e) the undertaking of any public gas supplier within the meaning of Part I of the ^{M2}Gas Act 1986;
 - (f) the undertaking of any person authorised by a licence under Part I of the ^{M3}Electricity Act 1989 to generate, [^{F5}supply or participate in the transmission of] electricity;
 - (g) the undertaking of any navigation, harbour or conservancy authority or of any internal drainage board;
 - (h) the undertaking of any railway undertakers;
 - (i) any public utility undertaking carried on by a local authority under any Act or under any order having the force of an Act.
 - [^{F6}(j) the undertaking of any licensed operator, within the meaning of the Coal Industry Act 1994;]
 - [^{F7}(k) the undertaking of a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (air traffic services) to the extent that it is the person’s undertaking as licence holder.]
- [^{F8}(5A) In sub-paragraph (5)(a) above “universal service provider” has the same meaning as in the Postal Services Act 2000; and the reference to the provision of a universal postal service shall be construed in accordance with that Act.]
- (6) For the purposes of this paragraph any reference in this paragraph, in relation to any such airport as is mentioned in sub-paragraph (5)(d) above, to the persons carrying on the undertaking is a reference to the airport operator.

Textual Amendments

- F1** Words in Sch. 13 para. 1(2)(5)(a) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 127** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**
- F2** Words in Sch. 13 para. 1(5)(a) substituted (31.10.1994) by 1994 c. 21, ss. 67(1), 68(2), **Sch. 9 para. 42(a)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F3** Words in Sch. 13 para. 1(5)(a) substituted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 88(2)**
- F4** Sch. 13 para. 1(5)(c) substituted (25.7.2003) by Communications Act 2003 (c. 21), ss. 406, 411(2)(3), **Sch. 17 para. 111(2)**; S.I. 2003/1900, **art. 2(1)**, Sch. 1
- F5** Words in Sch. 13 para. 1(5)(f) substituted (1.9.2004) by Energy Act 2004 (c. 20), ss. 143, 198(2), **Sch. 19 para. 17**; S.I. 2004/2184, **art. 2(2)**, Sch. 2
- F6** Sch. 13 para. 1(5)(j) inserted (31.10.1994) by 1994 c. 21, ss. 67(1), 68(2), **Sch. 9 para. 42(b)** (with s. 40(7)); S.I. 1994/2553, **art. 2**
- F7** Sch. 13 para. 1(5)(k) inserted (1.4.2001) by 2000 c. 38, s. 37, **Sch. 5 para. 14**; S.I. 2001/869, **art. 2**
- F8** Sch. 13 para. 1(5A) inserted (26.3.2001) by S.I. 2001/1149, art. 3(1), **Sch. 1 para. 88(3)**

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Modifications etc. (not altering text)

- C1** Sch. 13 para. 1(5)(e) amended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(2)(m)**; S.I. 1996/218, art. 2

Marginal Citations

- M1** 1986 c. 31.
M2 1986 c. 44.
M3 1989 c. 29.

Protection for statutory powers and jurisdiction

- 2 Nothing in any provision of this Act conferring power on a relevant undertaker to carry out any works shall confer power to do anything which prejudices the exercise of any statutory power, authority or jurisdiction from time to time vested in or exercisable by any persons carrying on an undertaking protected by paragraph 1 above.

Special protection for certain undertakings in respect of street works

- 3 (1) Subject to the following provisions of this paragraph and without prejudice to the other provisions of this Schedule, the powers under the street works provisions to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the ^{M4}Highways Act 1980)—
- (a) is under the control or management of, or is maintainable by, railway undertakers or a navigation authority; or
 - (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,
- except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.
- (2) Sub-paragraph (1) above shall not apply to any exercise of the powers conferred by the street works provisions for the carrying out of emergency works, within the meaning of Part III of the ^{M5}New Roads and Street Works Act 1991.
- (3) A consent given for the purposes of sub-paragraph (1) above may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.
- (4) Any dispute—
- (a) as to whether a consent for the purposes of sub-paragraph (1) above should be given or withheld; or
 - (b) as to whether the conditions to which any such consent is made subject are reasonable,
- shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (5) If any relevant undertaker contravenes, without reasonable excuse, the requirements of sub-paragraph (1) above, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

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- (6) The restrictions contained in paragraphs (1) to (5) of section 32 of the ^{M6}Tramways Act 1870 (protection of tramways) shall apply in relation to any exercise of a power conferred by the street works provisions—
- (a) as they apply in relation to the powers mentioned in that section; and
 - (b) as if references in that section to a tramway included references to a trolley vehicle system.
- (7) In this paragraph “the street works provisions” means so much of sections 158, 161 and 162 of this Act as relates to powers exercisable in relation to streets.
- (8) Until the coming into force of section 52 of the ^{M7}New Roads and Street Works Act 1991, sub-paragraph (2) above shall have effect as if the reference to Part III of that Act were a reference to the ^{M8}Public Utilities Street Works Act 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this paragraph).

Modifications etc. (not altering text)

C2 Sch. 13 para. 3 applied (with modifications) (21.7.1994) by 1994 c. xi, s. 11(2)

Marginal Citations

M4 1980 c. 66.
M5 1991 c. 22.
M6 1870 c. 78.
M7 1991 c. 22.
M8 1950 c. 39.

Protection for telecommunication systems

- 4 Paragraph 23 of Schedule 2 to the ^{M9}Telecommunications Act 1984 (which provides a procedure for certain cases where works involve the alteration of [^{F9}electronic communications apparatus]) shall apply to every relevant undertaker for the purposes of any works carried out by that undertaker in exercise of any of the powers conferred by any enactment (including, in the case of a statutory water company, section 1 of the ^{M10}Statutory Water Companies Act 1991).

Textual Amendments

F9 Words in Sch. 13 para. 4 substituted (25.7.2003) by Communications Act 2003 (c. 21), ss. 406, 411(2) (3), Sch. 17 para. 111(3); S.I. 2003/1900, art. 2(1), Sch. 1

Marginal Citations

M9 1984 c. 12.
M10 1991 c. 58.

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