

SCHEDULE 12

Article 41

PROTECTIVE PROVISIONS

PART 1

Protection for Environment Agency

1.—(1) The following provisions shall apply for the protection of the drainage authority unless otherwise agreed in writing between the undertaker and the drainage authority.

(2) In this Part of this Schedule—

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” shall be construed accordingly;

“drainage authority” means the Environment Agency;

“drainage work” means any watercourse and includes any land which provides or is expected to provide flood storage capacity for any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring;

“the fishery” means any waters containing fish and the spawn, habitat or food of such fish;

“plans” includes sections, drawings, specifications and method statements;

“specified work” means so much of the authorised development as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to affect any drainage work;

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer.

2.—(1) Before beginning to construct any specified work, the undertaker shall submit to the drainage authority plans of the specified work and such further particulars available to it as the drainage authority may within 28 days of the submission of the plans reasonably require.

(2) Any such specified work shall not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 11.

(3) Any approval of the drainage authority required under this paragraph—

(a) shall not be unreasonably withheld or delayed;

(b) shall be deemed to have been given if it is neither given nor refused within 2 months of the submission of the plans for approval and, in the case of a refusal, accompanied by a statement of the grounds of refusal; and

(c) may be given subject to such reasonable requirements as the drainage authority may make for the protection of any drainage work or the fishery or for the protection of water resources for the prevention of pollution or in the discharge of its environmental duties.

(4) The drainage authority shall use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(b).

3. Without limiting the scope of paragraph 2, the requirements which the drainage authority may make under that paragraph include conditions requiring the undertaker at its own expense to construct such protective works, whether temporary or permanent, during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

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- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

by reason of any specified work.

4.—(1) Subject to sub-paragraph (2), any specified work, and all protective works required by the drainage authority under paragraph 3, shall be constructed—

- (a) without unreasonable delay in accordance with the plans approved or deemed to have been approved or settled under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the drainage authority,

and an officer of the drainage authority shall be entitled to watch and inspect the construction of such works.

(2) The undertaker shall give to the drainage authority not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work or any protective work required by the drainage authority is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the drainage authority may by notice in writing require the undertaker at the undertaker's own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed) to remove, alter or pull down the work and, where removal is required, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the undertaker.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority shall not except in emergency exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

5.—(1) Subject to sub-paragraph (5) the undertaker shall from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the Order limits on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice in writing require the undertaker to repair and restore the work, or any part of such work, or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the work and restore the site to its former condition, to such extent and within such limits as the drainage authority reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the

drainage authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority shall not except in a case of emergency exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prescribed by the powers of the Order from doing so; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

6. If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage shall be made good by the undertaker to the reasonable satisfaction of the drainage authority and if the undertaker fails to do so, the drainage authority may make good the impairment or damage and recover from the undertaker the expense reasonably incurred by it in doing so.

7.—(1) The undertaker shall take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the drainage authority has reason to expect that such damage may be caused, the drainage authority may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) If within such time as may be reasonably practicable for that purpose after the receipt of written notice from the drainage authority of any damage or expected damage to a fishery, the undertaker fails to take such steps as are described in sub-paragraph (2), the drainage authority may take those steps and may recover from the undertaker the expense reasonably incurred by it in doing so.

(4) In any case where immediate action by the drainage authority is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the drainage authority may take such steps as are reasonable for the purpose, and may recover from the undertaker the reasonable cost of so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the drainage authority has taken, or commenced to take, the steps specified in the notice.

8. The undertaker shall indemnify the drainage authority in respect of all costs, charges and expenses which the drainage authority may reasonably incur or have to pay or which it may sustain—

- (a) in the consideration or approval of plans under this Part of this Schedule; and
- (b) in the inspection of the construction of the specified works or any protective works required by the drainage authority under this Part of this Schedule.

9.—(1) Without prejudice to the other provisions of this Part of this Schedule, the undertaker shall indemnify the drainage authority from all claims, demands, proceedings, costs, damages, expenses

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or loss, which may be made or taken against, recovered from, or incurred by, the drainage authority by reason of—

- (a) any damage to any drainage work so as to impair its efficiency for the purposes of flood defence;
- (b) any raising or lowering of the water table in land adjoining the authorised works or any sewers, drains and watercourses;
- (c) any flooding or increased flooding of any such lands;
- (d) any damage to the fishery;
- (e) inadequate water quality in any watercourse or other surface waters or in any groundwater,

which is caused by the construction of any of the specified works or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon the work.

(2) The drainage authority shall give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the agreement of the undertaker which agreement shall not be unreasonably withheld or delayed.

**10.** The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any directions or award of an arbitrator, shall not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

**11.** Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and the Environment Agency in respect of land belonging to the undertaker on the date on which the Order is made.

## PART 2

### PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

**1.—(1)** For the protection of any operator, the following provisions shall, unless otherwise agreed in writing between the undertaker and the operator, have effect.

(2) In this Part of this Schedule—

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system shall be construed in accordance with paragraph 1(3A) of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the Communications Act 2003<sup>(1)</sup>;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

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(1) 2003 c. 21. There are amendments to this Act, which are not relevant to this Order.

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

2. Paragraph 23 of Schedule 2 to the Telecommunications Act 1984(2) (which provides a procedure for certain cases where works involve the alteration of electronic communications apparatus), shall apply in relation to the exercise of the powers of article 29 (statutory undertakers).

3.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or other property of an operator); or

(b) there is any interruption in the supply of the service provided by an operator, the undertaker shall bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and shall—

(i) make reasonable compensation to an operator for loss sustained by it; and

(ii) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) shall impose 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 an operator, its officers, servants, contractors or agents.

(3) The operator shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand shall be made without the consent of the undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph shall be referred to and settled by arbitration under article 42 (arbitration) of this Order.

4. This Part of this Schedule shall not apply to any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act(3).

5. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.

## PART 3

### FOR THE PROTECTION OF UTILITY UNDERTAKERS

1. For the protection of the utility undertakers referred to in this Part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the utility undertakers concerned, have effect.

2. In this Part of this Schedule—

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(2) 1984 c. 12, as amended by Schedule 3, paragraphs 1 and 5(a), and (d) to the Communications Act 2003, section 190 of, and Schedule 25, paragraph 68 and Schedule 27, Part 1 to, the Water Act 1989, section 112 (4) of, and Schedule 18 to, the Electricity Act 1989 and section 106(2) of, and Schedule 3 paragraphs 1 and 8 to, the Communications Act 2003.

(3) 1991 c. 22.

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“alternative apparatus” means alternative apparatus adequate to enable the undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of an electricity undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to or maintained by that undertaker;
- (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of a water undertaker—
  - (i) mains, pipes or other apparatus belonging to, or maintained by, the undertaker for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;
- (d) in the case of a sewerage undertaker—
  - (i) any drain or works vested in the undertaker under the Water Industry Act 1991; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to 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; and

“utility undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989, save that this shall not include National Grid Electricity Transmission plc or any affiliate or successor body thereof;
- (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986;
- (c) a water undertaker within the meaning of the Water Industry Act 1991; and
- (d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development landward of mean low water level, and in relation to any apparatus, means the utility undertaker to whom it belongs or by whom it is maintained.

**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.

**4.** Regardless of any provision in this Order or anything shown on the land plan the undertaker shall not acquire any apparatus other than by agreement.

**5.—(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, that apparatus shall not be removed under this Part of this Schedule and any right of a utility undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question.

(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 shall give to the utility undertaker in question written notice of that 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 and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a utility undertaker reasonably needs to remove any of its apparatus) the undertaker shall, 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 for the subsequent 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 in question shall, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use all reasonable 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 shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 42 (arbitration).

(5) The utility undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 42, and after the grant to the utility undertaker 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 utility undertaker in question 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 controlled by the undertaker, that work, instead of being executed by the utility undertaker, shall be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Sub-paragraph (6) applies to any part of any work necessary in connection with construction of alternative apparatus, or the removal of apparatus required to be removed, as will take place in any land of the undertaker.

(8) Nothing in sub-paragraph (6) shall authorise 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.

**6.—(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 shall 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 42 (arbitration).

(2) In settling those terms and conditions in respect of the alternative apparatus to be constructed, the arbitrator shall—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the electricity generating station 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 undertaker; and

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(b) 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, if any, applicable to the apparatus constructed for which the alternative apparatus is to be substituted.

(3) 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 shall make such provision for the payment of compensation by the undertaker to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

7.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker shall submit to the utility undertaker in question a plan, section and description of the works to be executed.

(2) Those works shall be executed only in accordance with the plan, section and description 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 an officer of the utility undertaker shall be entitled to watch and inspect the execution of those works.

(3) Any requirements made by the utility undertaker under sub-paragraph (2) shall be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are 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 5 and 6 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).

(5) Nothing in this paragraph shall preclude 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, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan, section and description.

(6) The undertaker shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the utility undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and shall comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

8.—(1) If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the undertaker shall provide such alternative means of access to such apparatus as will enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

(2) Subject to the following provisions of this paragraph, the undertaker shall repay to a utility undertaker the reasonable expenses 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 5(2).

(3) There shall be deducted from any sum payable under sub-paragraph (2) the value of any apparatus removed under the provisions of this Part of this Schedule, that value being calculated after removal.



(4) 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,

and the placing of apparatus of that type or capacity or 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 42 (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 undertaker in question by virtue of sub-paragraph (2), shall be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as 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.

(6) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (2) shall, 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 undertaker 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.

**9.—**(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the works referred to in paragraph 5(2), any damage is caused to any 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 shall—

- (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 utility undertaker, by reason or in consequence of any such damage or interruption,

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

(2) Nothing in sub-paragraph (1) shall impose 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.

(3) A utility undertaker shall give the undertaker reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the undertaker, which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

**10.** Nothing in this Part of this Schedule shall affect 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 the Order is made.

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