

SCHEDULE 8

Article 38

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY,
GAS, WATER AND SEWERAGE UNDERTAKERS

Application

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

Interpretation

2. In this Part—

“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 undertaker referred to in sub-paragraph (a) of the definition of “undertaker”, electric lines or electrical plant (as defined in the Electricity Act 1989⁽¹⁾), belonging to or maintained by that undertaker;
- (b) in the case of an undertaker referred to in sub-paragraph (b) of the definition of “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 an undertaker referred to in sub-paragraph (c) of the definition of “undertaker”, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of an undertaker referred to in sub-paragraph (d) of the definition of “undertaker”—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991⁽²⁾ and Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011; 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;

“commence” has the same meaning as in paragraph 1 of Schedule 9 (Requirements);

“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, across, along or upon land;

(1) 1989 c. 29.

(2) 1991 c. 56.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“plan” includes a section and description of the works to be executed;

“promoter” means the undertaker as defined in article 2 of this Order;

“undertaker” means—

- (a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;
 - (b) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽³⁾;
 - (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, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

“United Utilities” means United Utilities PLC (company number 02366616) whose registered address is Haweswater House, Lingley Mere Business Park, Lingley Green Avenue, Great Sankey, Warrington, WA5 3LP.

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

Temporarily stopped up streets

4. Notwithstanding the temporary stopping up or diversion of any streets or highway under the powers in article 12 (temporary stopping up of streets and rights of way), an undertaker shall be at liberty at all times 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, renew or use any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5.—(1) The promoter, in the case of the powers conferred by article 16 (protective work to buildings), 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 any undertaker or any interruption in the supply of electricity, gas or water, as the case may be, by the undertaker is caused, the promoter shall bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make reasonable compensation to the undertaker for any loss sustained by it; and
- (b) indemnify the undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on the promoter with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of an undertaker or its contractors or workers; and the undertaker shall give to the promoter reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the promoter.

Acquisition of apparatus

6. Notwithstanding any provision in this Order or anything shown on the land plans, the promoter shall not acquire any apparatus otherwise than by agreement.

(3) 1986 c. 44.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the promoter acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part and any right of an 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 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 promoter requires the removal of any apparatus placed in that land, it shall give to the undertaker in question 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 promoter shall, subject to sub-paragraph (3), afford to the undertaker the necessary—

(a) facilities and rights for the construction of alternative apparatus in other land of the promoter; and

(b) subsequently facilities and rights 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 promoter, or the promoter 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 undertaker in question shall, on receipt of a written notice to that effect from the promoter, 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 promoter under this Part shall be constructed in such manner and in such line or situation as may be agreed between the undertaker in question and the promoter or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41 (arbitration), and after the grant to the 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 promoter to be removed under the provisions of this Part.

(6) Notwithstanding anything in sub-paragraph (5), if the promoter gives notice in writing to the 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 of the promoter, that work, instead of being executed by the undertaker, shall be executed by the promoter without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) shall authorise the promoter 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

8.—(1) Where, in accordance with the provisions of this Part, the promoter affords to an undertaker facilities and rights for the construction, use, maintenance, renewal and inspection in land of the promoter 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 promoter and the undertaker in question or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

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

- (a) give effect to all reasonable requirements of the promoter for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the authorised development, its safety or its efficient operation; and
- (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 in the authorised development for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the promoter 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 more or less favourable on the whole to the 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 to or by the promoter by or to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

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

(2) In relation to works which will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon any sewer, the plan to be submitted to the undertaker under sub-paragraph (1) shall be detailed and describe—

- (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 sewers within 15 metres of the works or upon which the works will impose a load; and
- (e) by way of detailed drawings, every alteration proposed to be made to any such sewer.

(3) The promoter shall not commence the construction or renewal of any works to which sub-paragraph (2) applies until the undertaker has given written approval of the plan so submitted.

(4) Any approval of the undertaker required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5);
- (b) shall not be unreasonably withheld; and
- (c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

(5) In relation to a work to which sub-paragraph (2) applies, the specified undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its sewerage system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any sewer.

(6) Works of the type referred to in paragraph 7(2) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) (and in the case of a plan relating to sewers, in accordance with the plan approved or deemed to have been approved under sub-paragraph (4) or settled by arbitration in accordance with article 41 (arbitration), as amended from time to time by agreement

between the promoter and the undertaker) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (7) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker shall be entitled to watch and inspect the execution of those works.

(7) Any requirements made by an undertaker under sub-paragraph (6) shall be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(8) If an undertaker in accordance with sub-paragraph (7) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs 1 to 3 and 5 to 8 shall apply as if the removal of the apparatus had been required by the promoter under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the promoter 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 shall apply to and in respect of the new plan.

(10) The promoter shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (6) insofar as is reasonably practicable in the circumstances.

Expenses

10.—(1) Subject to the following provisions of this paragraph, the promoter shall repay to an undertaker the reasonable expenses incurred by that 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 7(2).

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

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

- (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 promoter or, in default of agreement, is not determined by arbitration in accordance with article 41 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part 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 (1) shall 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 shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

- (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 shall 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 undertaker in respect of works by virtue of sub-paragraph (1) 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.

Indemnity

11.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 7(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 an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the promoter shall—

- (a) bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and
- (b) make reasonable compensation to that 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) Nothing in sub-paragraph (1) shall impose any liability on the promoter with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

(3) An undertaker shall give the promoter reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the promoter 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.

Ground subsidence monitoring scheme in respect of United Utilities' apparatus

12.—(1) No works comprised in Work No. 1A in Schedule 1 (authorised development) shall commence until a scheme for monitoring ground subsidence (referred to in this paragraph as the “monitoring scheme”) which is capable of interfering with or risking damage to United Utilities' apparatus has been submitted to and approved by United Utilities, such approval not to be unreasonably withheld or delayed.

(2) The monitoring scheme shall set out—

- (a) the apparatus of United Utilities which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, shall require the promoter to submit for United Utilities' approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (4).

(3) The monitoring scheme must be implemented as approved, unless otherwise agreed in writing with United Utilities.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e),

a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a “mitigation scheme”) shall be submitted to United Utilities for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with United Utilities.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to paragraph 35 of Schedule 9 (Requirements) the promoter may submit a revised monitoring scheme or mitigation scheme to United Utilities for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with United Utilities.

Enactments and agreements

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

Co-operation

14. Where in consequence of the proposed construction of any of the authorised development, the promoter or an undertaker requires the removal of apparatus under paragraph 7(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 9(6), the promoter shall 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 each undertaker shall use its best endeavours to co-operate with the promoter for that purpose.

Access

15. If in consequence of the exercise of the powers of this Order the access to any apparatus is materially obstructed, the promoter shall provide such alternative means of access to such apparatus as will, so far as reasonably practicable, enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Any difference or dispute arising between the promoter and an undertaker under this Schedule shall, unless otherwise agreed in writing between the promoter and that undertaker, be determined by arbitration in accordance with article 41 (arbitration).

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1. For the protection of any operator, the following provisions shall, unless otherwise agreed in writing between the promoter (as defined in Part 1) and the operator, have effect.

2. In this Part—

“the 2003 Act” means the Communications Act 2003(4);

(4) 2003 c. 21.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

“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 2003 Act⁽⁵⁾;

“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;

“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.

3. The exercise of the powers of article 29 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunication Act 1984⁽⁶⁾.

4.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its 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 promoter 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 promoter 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 promoter 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 promoter 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) This Part shall not apply to—

- (a) any apparatus in respect of which the relations between the promoter and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

⁽⁵⁾ See section 106.

⁽⁶⁾ 1984 c. 12.

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

5. The temporary stopping up or diversion of any highway under article 12 (temporary stopping up of streets and rights of way) shall not affect any right of the operator under paragraph 9 of the electronic communications code to maintain any apparatus which, at the time of the stopping up or diversion, is in that highway.

6. Any difference or dispute arising between the promoter and an operator under this Part, unless otherwise agreed in writing between the promoter and that operator, be referred to and settled by arbitration under article 41 (arbitration).

PART 3

FOR THE PROTECTION OF BLACKPOOL BOROUGH COUNCIL

Application and interpretation

1.—(1) For the protection of Blackpool Borough Council and the operator the following provisions shall, unless otherwise agreed in writing between the promoter (as defined in Part 1) and Blackpool Borough Council, have effect.

(2) In this Part—

“commence” has the same meaning as in paragraph 1 of Schedule 9 (Requirements);

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

“the engineer” means an engineer to be appointed by Blackpool Borough Council;

“the operator” means the operator for the time being of the Blackpool to Fleetwood Tramway;

“plans” includes a section and description of the works to be executed and “approved plans” means plans approved in accordance with the provisions of this Part or settled by arbitration under article 41 (arbitration);

“specified works” means so much of the authorised development as is situated upon, across, under, over or within 15 metres of tramway property or which in any way adversely affects tramway property;

“tramway property” means—

- (a) any tram rail of Blackpool Borough Council;
- (b) any works, apparatus and equipment of Blackpool Borough Council or the operator connected with such tram rails; and
- (c) any land, premises, structures or erections held or used by Blackpool Borough Council or the operator for the purposes of operating such tram rails or such works, apparatus and equipment.

Pedestrian and vehicular access

2.—(1) The promoter shall not in the exercise of the powers in this Order prevent pedestrian or vehicular access to any tramway property, unless preventing such access is with the consent of the engineer.

(2) The consent of the engineer under sub-paragraph (1) shall not be unreasonably withheld or delayed but may be given subject to reasonable conditions.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Approval of plans

3. The promoter shall, before commencing the construction of any part of the specified works, furnish to the engineer such proper and sufficient plans relevant to the part of the specified works concerned as may be reasonably required by the engineer; and the promoter shall not commence those specified works until the plans have been approved in writing by the engineer or settled by arbitration under article 41 (arbitration).

4. The engineer's approval under paragraph 3 shall not be unreasonably withheld and any question of whether it has been unreasonably withheld shall in the absence of agreement be settled by arbitration under article 41 (arbitration).

Protective works

5.—(1) Upon signifying approval or disapproval of the plans submitted pursuant to paragraph 3 the engineer may notify the promoter in writing of any protective works, whether temporary or permanent, which in the reasonable opinion of the engineer should be carried out before the commencement of the construction of the specified works to ensure the stability of tramway property, or the continuation of the safe and effective operation of the tram rails of Blackpool Borough Council; and such protective works as may be reasonably necessary for those purposes shall be constructed by Blackpool Borough Council and the operator with all reasonable dispatch or, if engineer so notifies the promoter, such protective works shall be carried out by the promoter (in either case at the expense of the promoter).

(2) The promoter shall not commence the construction of the specified works until the engineer has notified the promoter that the protective works referred to in sub-paragraph (1) have been completed to the engineer's reasonable satisfaction.

Notice of works and maintenance

6. The promoter shall give to the engineer not less than 28 days' notice of its intention to—
- (a) commence the construction of any of the specified works; and
 - (b) (save in the event of an emergency in which case it shall give such notice as may be reasonably practicable in the circumstances) carry out any maintenance of the specified works in so far as such maintenance adversely affects tramway property.

Manner of carrying out specified and protective works

7. The construction by the promoter of the specified works, any protective works described in paragraph 5 and any alterations and additions to such specified works and protective works shall, when commenced, be carried out—

- (a) with all reasonable dispatch in accordance with the plans approved under paragraph 3 or settled under article 41 (arbitration);
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer; and
- (c) in such manner as to cause—
 - (i) as little damage as reasonably practicable to tramway property;
 - (ii) as little interference as is reasonably practicable with the conduct of traffic on the tram lines of Blackpool Borough Council and the use by passengers of tramway property,

and if any such damage or interference shall be caused by the promoter carrying out the specified works or any protective works, the promoter shall, notwithstanding any

approval given under paragraph 3 or settled under article 41 (arbitration), make good such damage and shall pay to Blackpool Borough Council and the operator (as appropriate) all reasonable expenses to which Blackpool Borough Council or the operator (as appropriate) may be put and compensation for any loss which Blackpool Borough Council or the operator (as appropriate) may sustain by reason of any such damage or interference.

8. Nothing in paragraph 7 shall impose any liability on the promoter with respect to any damage, cost, expense or loss which is attributable to the act, neglect or default of Blackpool Borough Council or the operator or any person in either of their employ or of either of their contractors or agents; and any liability of the promoter under paragraph 7 shall be reduced proportionately to the extent to which any damage, cost, expense or loss is attributable to the act, neglect or default of Blackpool Borough Council or the operator or any person in either of their employ or of either of their contractors or agents.

Access for the carrying out of works in compliance with this Part

9. The promoter shall at all times afford reasonable facilities to the engineer for access to the specified works during their construction and the construction of any protective works carried out by the promoter pursuant to the provisions of paragraph 5 and shall supply the engineer with all such information as the engineer may reasonably require with regard to the specified works or any such protective works or to the method of their construction.

10.—(1) During the construction of any works by Blackpool Borough Council or the operator under this Part Blackpool Borough Council and the operator shall at all times afford reasonable facilities to the promoter and its agents for access to those works, and shall supply the promoter with such information as the promoter reasonably requires with regard to such works or the method of construction of such works.

(2) During the construction of the specified works Blackpool Borough Council and the operator shall at all reasonable times subject to the prior written approval of the engineer afford reasonable facilities to the promoter and its agents for access to tramway property and shall supply the promoter with such information as the promoter reasonably requires with regard to tramway property as is reasonably necessary to enable the promoter to comply with sub-paragraphs (a) to (c) of paragraph 7.

(3) During the carrying out of maintenance of the specified works under paragraph 12 Blackpool Borough Council and the operator shall at all reasonable times subject to the prior written approval of the engineer afford reasonable facilities to the promoter and its agents for access to tramway property and shall supply the promoter with such information as the promoter reasonably requires with regard to tramway property as is reasonably necessary to enable the promoter to comply with paragraph 12.

Expenses

11. The promoter shall repay to Blackpool Borough Council or the operator (as appropriate) all reasonable costs, charges and expenses reasonably incurred by Blackpool Borough Council or the operator (as appropriate)—

- (a) in constructing any protective works under the provisions of paragraph 5, including, in respect of any permanent protective works, a capitalised sum representing the cost which may be expected to be reasonably incurred by Blackpool Borough Council or the operator (as appropriate) in maintaining and renewing such works (such sum in the absence of agreement to be settled by arbitration under article 41 (arbitration)); and
- (b) in respect of the approval of plans and any supervision by the engineer of the construction of the specified works.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

Right to require maintenance of specified works

12. If at any time after the completion of a specified work (unless that specified work is vested in Blackpool Borough Council) the engineer gives notice to the promoter informing it that the state of repair of the specified work appears to be such that it adversely affects the safe and effective operation of tramway property, the promoter shall, on receipt of such a notice, take such steps as are reasonably necessary to put that specified work in a state of repair such that it no longer adversely affects tramway property.

Indemnity

13. The promoter shall be responsible to Blackpool Borough Council and the operator (as appropriate) for all reasonable costs, charges, damages and expenses not otherwise provided for in paragraph 11 which may be occasioned to, or reasonably incurred by, Blackpool Borough Council or the operator (as appropriate)—

- (a) by reason of the construction or maintenance of the specified works or the failure of the specified works; or
- (b) by reason of any act or omission of the promoter or of any person in its employ or of its contractors whilst engaged in the construction or maintenance of the specified works,

and the promoter shall indemnify Blackpool Borough Council and the operator from and against all claims and demands arising out of or in connection with the construction of the specified works or any such failure, act or omission; and the fact that any act or thing has been done in accordance with any requirement of the engineer or under the engineer's supervision shall not (unless it was done as a result of negligence on the part of Blackpool Borough Council or the operator or any person in either of their employ or of either of their contractors or agents) excuse the promoter from any liability under the provisions of this paragraph.

14.—(1) Any liability of the promoter under paragraph 13 shall be reduced proportionately to the extent to which any costs, charges, damages and expenses are attributable to the act, neglect or default of Blackpool Borough Council or the operator or any person in either of their employ or of either of their contractors or agents.

(2) The engineer shall give to the promoter immediate notice of any claim or demand described in paragraph 13 and no settlement or compromise of the claim or demand shall be made without the consent of the promoter 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.

(3) In the assessment of any sums payable to Blackpool Borough Council or the operator under this Part there shall not be taken into account any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Blackpool Borough Council or the operator if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the promoter under this Part or increasing the sums so payable.

(4) The engineer shall, on receipt of a request from the promoter, from time to time provide the promoter free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part and with such information as may reasonably enable the promoter to assess the reasonableness of any such estimate or claim made or to be made pursuant to this Part.

Approvals and arbitration

15.—(1) Where any consent, approval or expression of satisfaction is sought under this Part from Blackpool Borough Council or the operator it shall not be unreasonably withheld or delayed.

Status: *This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

(2) Any difference or dispute arising between the promoter and Blackpool Borough Council or the operator under this Part shall be referred to and settled by arbitration under article 41 (arbitration).