



# Greater Nottingham Light Rapid Transit Act 1994

## 1994 CHAPTER xv

### PART IV

#### PROTECTIVE PROVISIONS

#### 45 For protection of certain statutory undertakers

For the protection of certain statutory undertakers the following provisions shall, unless otherwise agreed in writing between the undertakers and the undertakers concerned, apply and have effect:—

(1) In this section, unless the context otherwise requires—

“the company” means any of the following, namely a licence holder within the meaning of 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;

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

“apparatus” means—

- (a) electric lines and works (as defined in Part I of the Electricity Act 1989) belonging to, or maintained by, a licence holder under that Part; or
- (b) mains, pipes or other apparatus belonging to, or maintained by, a public gas supplier within the meaning of Part I of the Gas Act 1986; or
- (c) mains, pipes or other apparatus belonging to, or maintained by, a water undertaker for the purposes of water supply;

(not being apparatus in respect of which the relations between the undertakers and the company are regulated by the provisions of Part III of the Act of 1991), and includes any structure for the lodging therein of apparatus;

“construction” includes placing and altering;

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“in” in a context referring to apparatus includes under, over, across, along or upon:

- (2) Notwithstanding anything in this Act or shown on the deposited plans the undertakers shall not acquire any apparatus under this Act otherwise than by agreement:
- (3) If the undertakers 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 section, nor shall any right of the company to use, maintain, repair, renew or inspect any apparatus in those lands be extinguished, until any necessary adequate alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the company:
- (4)
  - (a) If the undertakers, for the purpose of constructing any of the authorised works in, on or under any lands (including lands forming part of any street) acquired, held or used under this Act, require the removal of any apparatus placed in those lands, and give to the company not less than 56 days' 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 company shall reasonably require to remove any apparatus, the undertakers shall, if it is practicable to do so, afford to the company the necessary facilities and rights for the construction of any necessary adequate alternative apparatus in other lands of the undertakers and thereafter for the maintenance, repair, renewal and inspection of such apparatus;
  - (b) If the alternative apparatus, or any part thereof, is to be constructed elsewhere than in other lands of the undertakers, the company shall, on receipt of a written notice to that effect from the undertakers, as soon as reasonably practicable exercise their powers to lay alternative apparatus:
- (5)
  - (a) Subject, in the case of any alternative apparatus to be laid in a road, to any requirements imposed under Part III of the Act of 1991 any alternative apparatus to be constructed in pursuance of paragraph (4) above shall be constructed in such manner, and in such line or situation, as may be agreed between the company and the undertakers or, in default of agreement, determined by arbitration;
  - (b) The company shall, after the manner of construction and the line and situation of any necessary alternative apparatus have been agreed or determined as aforesaid, proceed with all reasonable dispatch to construct and bring into operation the alternative apparatus and thereafter to remove any apparatus required by the undertakers to be removed under the provisions of this section:
- (6) Notwithstanding anything in paragraph (5) above, if the undertakers give notice in writing to the company that they desire to carry out 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, such work, instead of being carried out by the company, shall be carried out by the undertakers with all reasonable dispatch under the superintendence (if given) and to the reasonable satisfaction of the company:
- (7) Nothing in paragraph (6) above shall authorise the undertakers to carry out the actual placing, erection, installation, bedding, packing, removal, connection or disconnection of any apparatus or execute any filling around the apparatus (where the apparatus is

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laid in a trench, tunnel, heading or boring) within 600 millimetres (measured in any direction) of the apparatus:

- (8) Where, in accordance with the provisions of this section, the undertakers afford to the company facilities and rights for the construction, maintenance, repair, renewal and inspection in lands of the undertakers 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 undertakers and the company or, in default of agreement, determined by arbitration:
- (9) In determining such terms and conditions as mentioned in paragraph (8) above in respect of alternative apparatus to be constructed across or along the authorised works the arbitrator shall—
  - (a) give effect to all reasonable requirements of the undertakers for ensuring the safety and efficient operation of the authorised works and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any such works; and
  - (b) so far as it may be reasonable and practicable to do so in the circumstances of the case, give effect to any terms and conditions applicable to the apparatus (if any) constructed across or along the authorised works for which the alternative apparatus is to be substituted:
- (10) If the facilities and rights to be afforded by the undertakers in respect of any alternative apparatus under paragraph (8) above and the terms and conditions subject to which the same are to be granted are, in the opinion of the arbitrator, more or less favourable on the whole to the company than the facilities, rights, terms and conditions applying to the apparatus to be removed, the arbitrator shall make such provision for the payment of compensation to or by the undertakers by or to the company in respect thereof as shall appear to him to be reasonable having regard to all the circumstances of the case:
- (11)
  - (a) Not less than 56 days before commencing to construct any of the authorised works which are near to, or will or may affect, any apparatus the removal of which has not been required by the undertakers under paragraph (4) above, the undertakers shall submit to the company a plan, section and description of the works to be constructed;
  - (b) Such works shall be constructed 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 company for the alteration or otherwise for the protection of the apparatus, or for securing access thereto, and the company shall be entitled by their officer to watch and inspect the construction of such works:
- (12) If the company within 42 days after the submission to them of any plan, section and description under paragraph (11) above shall, in consequence of the works proposed by the undertakers, reasonably require the removal of any apparatus and give written notice to the undertakers of such requirement, the foregoing provisions of this section shall have effect as if the removal of such apparatus had been required by the undertakers under paragraph (4) above:
- (13) Nothing in paragraph (11) or (12) above shall preclude the undertakers from submitting at any time, or from time to time, but in no case less than 28 days before commencing the construction of any such works, a new plan, section and description thereof in lieu of the plan, section and description previously submitted, and thereupon

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the provisions of those paragraphs shall apply to, and in respect of, such new plan, section and description:

- (14) The undertakers shall not be required to comply with paragraph (11) (a) above in a case of emergency but, in such a case, they shall give to the company notice so soon as reasonably practicable, and a plan, section and description of the works so soon as reasonably practicable thereafter, and shall comply with paragraph (11) (b) above so far as reasonably practicable in the circumstances:
- (15) If in consequence of the exercise of the powers of this Act the access to any apparatus is materially obstructed the undertakers shall provide alternative means of access to such apparatus:
- (16) The following provisions of this paragraph shall have effect for the provision by the undertakers, in the construction of the railways authorised by this Act, of accommodation or other facilities for the laying of apparatus under the railways:—
  - (a) Not less than 6 months before the undertakers commence the construction of any of the railways in any highway they shall give notice thereof in writing to each of the companies;
  - (b) If, within 56 days from the service on them of notice of the intended construction of any works under paragraph (a) above, the company give to the undertakers notice in writing that they desire such accommodation or other facilities to be provided, and such information as the undertakers may require to enable them to determine the extent and description of the accommodation or facilities to be provided and the means of access to apparatus laid therein, the undertakers shall, so far as it is reasonably practicable to do so, provide in the construction of the railway such accommodation or facilities for the laying of apparatus under the railway as may be agreed between them and the company, or in default of agreement, determined by arbitration;
  - (c) Subject to the provisions of this section, the company shall be entitled to use accommodation or other facilities and the means of access thereto provided by the undertakers for the laying and installing therein of the apparatus for which they were provided and for the purpose of inspecting, repairing, removing or renewing that apparatus;
  - (d) Except in case of emergency when they shall give such notice as they can in the circumstances, the company shall give the undertakers not less than 42 days' notice of their intention to lay and install or to repair, remove or renew apparatus in any such accommodation or facilities;
  - (e) In laying and installing apparatus in accommodation or other facilities provided by the undertakers the company shall conform with the reasonable requirements of the undertakers as to the times at which, and the manner in which, such company's works affecting the railways shall be carried out, and the undertakers shall be entitled to superintend the carrying out of such works;
  - (f) The company shall maintain in good repair and to the reasonable satisfaction of the undertakers any apparatus laid and installed in accommodation or facilities provided by the undertakers and shall take such precautions as the undertakers reasonably require to be taken for ensuring the safety of the railway and the traffic thereon;
  - (g) The accommodation or facilities provided by the undertakers shall be maintained by the undertakers to the reasonable satisfaction of the company;
  - (h) Except in case of emergency when they shall give such notice as they can, the undertakers shall give to the company not less than 42 days' notice in writing

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of their intention to carry out any works affecting any such accommodation or facilities and, in carrying out the same, shall take such measures as the company may reasonably require for the protection of, or for preventing interference with, their apparatus laid or installed therein:

- (17) (a) The undertakers shall repay the reasonable expenses incurred by the company in, or in connection with—
- (i) the removal and re-laying or replacing, alteration or protection of any apparatus or the provision and construction of any new apparatus under any of the provisions of this section; and
  - (ii) the cutting off of any apparatus from any other apparatus;
- (b) Subsections (3) and (4) of section 23 of the Public Utilities Street Works Act 1950 shall, so far as material, apply to any payment to be made by the undertakers under sub-paragraph (a) above as if the works there mentioned were such undertakers' works as are referred to in the said subsection (3), and as if in that subsection for the words “specified as so necessary in a specification of the works settled under Part I of the Fourth Schedule to this Act or agreed so to be by the promoting authority” there were substituted the words “agreed or settled by arbitration under section 45 (For protection of certain statutory undertakers) of the Greater Nottingham Light Rapid Transit Act 1994”:
- (18) (a) If, by reason or in consequence of the construction or failure of any of the authorised works or any subsidence resulting from any of those works, any damage shall be caused to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal) or property of the company, or any interruption shall be caused in the supply of electricity, gas or, as the case may be, water by the company, the undertakers shall repay the cost reasonably incurred by the company in making good such damage, or restoring the supply, and shall—
- (i) make reasonable compensation to the company for any loss sustained by them; and
  - (ii) indemnify the company against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or incurred by, the company;
- by reason or in consequence of any such damage or interruption;
- (b) Nothing in sub-paragraph (a) above shall impose any liability on the undertakers with respect to any damage or interruption to the extent that such damage or interruption is attributable to the neglect or default of the company, their officers, servants, contractors or other agents;
- (c) The company shall give to the undertakers reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the consent of the undertakers:
- (19) Where, in consequence of this Act, any part of any street, bridleway or footpath in which any apparatus is situate ceases to be part of the street, bridleway or footpath, the company may exercise the same rights of access to such apparatus as they enjoyed immediately before the passing of this Act, but nothing in this paragraph shall prejudice or affect any right of the undertakers or of the company to require removal of such apparatus under this section or the power of the undertakers to construct works in accordance with paragraph (11) above:

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- (20) Notwithstanding the temporary stopping-up or diversion of any highway under the powers of section 18 (Temporary stoppage of highways) of this Act, the company shall be at liberty at all times to carry out and do all such works and things in, upon or under any such highway as may be reasonably necessary 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 highway:
- (21) The undertakers shall, so far as is reasonably practicable, so exercise the powers conferred by section 22 (Underpinning of houses near works) of this Act as not to obstruct or render less convenient the access to any apparatus:
- (22) (a) Any difference arising between the undertakers and the company under this section (other than a difference as to its meaning or construction) shall be determined by arbitration;
- (b) In determining any difference under this section the arbitrator may, if he thinks fit, require the undertakers to construct any temporary or other works so as to avoid, so far as may be reasonably possible, interference with the use of any apparatus.