

SCHEDULES

SCHEDULE 9

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc., in stopped up streets

2.—(1) Where a street is stopped up under article 10 (construction of new and stopping up of existing streets) any statutory utility whose apparatus is under, in, upon, over, along or across the street has the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Order had not been made.

(2) The promoter must give not less than 28 days' notice in writing of its intention to stop up any street under article 10 to any statutory utility whose apparatus is under, in, upon, over, along or across that street.

(3) Where notice under sub-paragraph (2) has been given, any statutory utility whose apparatus is under, in, upon, over, along or across the street may, where reasonably necessary for the efficient operation of the undertaking of the statutory utility and, if reasonably requested so to do by the promoter, must—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory utility may reasonably determine and have power to place it; or
- (b) provide other apparatus in substitution for the existing apparatus and place it in that other position.

(4) Subject to the following provisions of this paragraph, the promoter must pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

- (a) the execution of relocation works reasonably required in consequence of the stopping up of the street; and
- (b) the doing of any other work or thing rendered reasonably necessary by the execution of relocation works.

(5) If in the course of the execution of relocation works under sub-paragraph (3)—

- (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 except where this has been solely due to using the nearest available type, capacity or dimension; 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 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 to be necessary in consequence of the construction of the relocation works in order to ensure the continued efficient operation of the undertaking of the statutory utility, then, if it involves cost in the execution of the relocation works exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the

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existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the statutory utility by virtue of sub-paragraph (4) is to be reduced by the amount of that excess.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus except in a case where the apparatus as so extended provides more than an equivalent service; 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 is to be treated as if it also had been agreed or had been so determined.

(7) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (4) (and having regard, where relevant, to sub-paragraph (5)) must, 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 statutory utility any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit as calculated in accordance with the Code of Practice entitled “Measures Necessary where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992 and approved by the Secretary of State on 30th June, 1992, as revised and re-issued from time to time.

(8) Sub-paragraphs (4) to (7) do not apply where the authorised works constitute major transport works for the purposes of Part 3 of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 of that Act (sharing of costs of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by the promoter and the statutory utility in such proportions as may be prescribed by any such regulations.

(9) In this paragraph—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means works executed, or apparatus provided, under sub-paragraph (3); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in paragraph 1(6).