

SCHEDULES

SCHEDULE 10

Article 245

PROTECTIVE PROVISIONS IN RESPECT OF CERTAIN UNDERTAKINGS

PART I

PROVISIONS APPLYING GENERALLY

General provisions protecting undertakings

1.—(1) Nothing in this Order conferring power on a relevant undertaker to carry out any works shall confer power to do anything, except with the consent of the persons carrying on an undertaking protected by this paragraph, which, whether directly or indirectly, so interferes or will so interfere—

- (a) with works or property vested in or under the control of the persons carrying on that undertaking, in their capacity as such; or
- (b) with the use of any such works or property,

as to affect injuriously those works or that property or the carrying on of that undertaking.

(2) A consent for the purposes of sub-paragraph (1) may be given subject to reasonable conditions but shall not be unreasonably withheld.

(3) Subject to the following provisions of this Schedule, any dispute—

- (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in sub-paragraph (1);
- (b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or
- (c) as to whether any condition subject to which any such consent has been given was reasonable,

shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(4) The following are the undertakings protected by this paragraph—

- (a) the undertaking of the Civil Aviation Authority;
- (b) the undertaking of any relevant undertaker;
- (c) the undertaking of a ^{F1}universal service provider within the meaning of Part 3 of the Postal Services Act 2011 (c.5);
- (d) any undertaking consisting in the provision of an electronic communications network;
- (e) any airport to which Article 25 of the Airports (Northern Ireland) Order 1994 (NI 1) applies;
- (f) the undertaking of any person who holds a licence under Chapter 1 of Part 1 of the Transport Act 2000 (c. 38);

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- (g) the undertaking of any person holding a licence under Article 8 of the Gas (NI) Order 1986 (NI 2) or Article 10 of the Electricity (Northern Ireland) Order 1992 (NI 1);
- (h) the undertaking of any navigation authority or harbour authority;
- (i) the undertaking of DARD in connection with its functions under the Drainage Order and the Lough Neagh Drainage Acts (Northern Ireland) 1955 and 1970;
- (j) any railway undertaking.

Textual Amendments

- F1** Words in [Sch. 10 para. 1\(4\)\(c\)](#) substituted (1.10.2011) by [Postal Services Act 2011 \(Consequential Modifications and Amendments\) Order 2011 \(S.I. 2011/2085\)](#), [art. 5\(1\)](#), [Sch. 1 para. 67](#)

Commencement Information

- II** [Sch. 10 para. 1](#) wholly in operation at 1.4.2007, see [art. 1\(2\)](#) and [S.R. 2007/194](#), [art. 2\(2\)](#), [Sch. 1 Pt. II](#) (subject to [art. 3](#), [Sch. 2](#))

Protection for statutory powers and jurisdiction

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

Commencement Information

- I2** [Sch. 10 para. 2](#) wholly in operation at 1.4.2007, see [art. 1\(2\)](#) and [S.R. 2007/194](#), [art. 2\(2\)](#), [Sch. 1 Pt. II](#) (subject to [art. 3](#), [Sch. 2](#))

Special protection for certain undertakings in respect of street works

3.—(1) Subject to the following provisions of this paragraph and without prejudice to the other provisions of this Schedule, the powers under Articles 219, 222 and 223 to break up or open a street shall not be exercisable where the street, not being a road—

- (a) is under the control or management of, or is maintainable by, a railway undertaking or a navigation authority; or
- (b) forms part of a level crossing belonging to any such undertaking or to such an authority or to any other person,

except with the consent of the undertaking or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Sub-paragraph (1) shall not apply to any exercise of the powers mentioned there for the carrying out of emergency works, within the meaning of Article 6 of the Street Works (Northern Ireland) Order 1995 (NI 19).

(3) A consent given for the purposes of sub-paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) Any dispute—

- (a) as to whether a consent for the purposes of sub-paragraph (1) should be given or withheld; or

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(b) as to whether the conditions to which any such consent is made subject are reasonable, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

(5) If any relevant undertaker contravenes, without reasonable excuse, the requirements of subparagraph (1), it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.

Commencement Information

- I3** Sch. 10 para. 3 wholly in operation at 1.4.2007, see art. 1(2) and S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Protection for ^{F2}electronic communications networks

Textual Amendments

- F2** Words in Sch. 10 para. 4 heading substituted (28.12.2017) by The Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Secondary Legislation) Regulations 2017 (S.I. 2017/1011), reg. 1(1), Sch. 4 para. 33(2)(a)

4. [^{F3}Part 10 of Schedule 3A to the Communications Act 2003] (which provides a procedure for certain cases where works involve the alteration of electronic communications apparatus) shall apply to every relevant undertaker for the purposes of any works carried out by that undertaker in exercise of any of the powers conferred by any statutory provision.

Textual Amendments

- F3** Words in Sch. 10 para. 4 substituted (28.12.2017) by The Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Secondary Legislation) Regulations 2017 (S.I. 2017/1011), reg. 1(1), Sch. 4 para. 33(2)(b)

Commencement Information

- I4** Sch. 10 para. 4 wholly in operation at 1.4.2007, see art. 1(2) and S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

PART II

FURTHER PROTECTIVE PROVISIONS IN RESPECT OF SEWERAGE POWERS

Protection for airports, railways etc.

5.—(1) Subject to the provisions of this paragraph, nothing in the relevant sewerage provisions shall authorise a sewerage undertaker, without the consent of the Civil Aviation Authority or, as the case may be, of the airport operator or railway undertaking (“the body concerned”) , to carry out any works along, across or under—

- (a) any property of the Civil Aviation Authority;
- (b) an airport to which Article 25 of the Airports (Northern Ireland) Order 1994 applies; or

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- (c) any railway of any railway undertaking.
- (2) A consent under this paragraph shall not be unreasonably withheld.
- (3) Any dispute as to whether or not consent under this paragraph is unreasonably withheld shall be referred, if either party so require, to the arbitration of a single arbitrator appointed by agreement between the parties or, in default of agreement, by the President of the Institution of Civil Engineers.
- (4) Upon an arbitration under this paragraph, the arbitrator shall determine—
 - (a) whether any works which the sewerage undertaker proposes to carry out are such works as under this paragraph the undertaker is not entitled to carry out without the consent of the body concerned;
 - (b) if they are such works, whether the injury, if any, to the body concerned will be of such a nature as to admit of being fully compensated by money; and
 - (c) if the works are of such a nature, the conditions subject to which the sewerage undertaker may carry out the works, including the amount of the compensation (if any) to be paid by the sewerage undertaker to the body concerned.
- (5) The sewerage undertaker in question shall not proceed to carry out any proposed works if, on an arbitration under this paragraph, the arbitrator determines—
 - (a) that the proposed works are such works as the sewerage undertaker is not entitled to carry out without the consent of the body concerned; and
 - (b) that the works would cause injury to the body concerned of such a nature as not to admit of being fully compensated by money,
 but, in any other case, the sewerage undertaker may carry out the works subject to compliance with such conditions, including the payment of such compensation, as the arbitrator may have determined.
- (6) Nothing in this paragraph shall be construed as limiting the powers of a sewerage undertaker under this Order in respect of the opening and the breaking up of streets and bridges for the purpose of constructing, laying and maintaining sewers, drains and pipes.

Commencement Information

- I5** Sch. 10 para. 5 wholly in operation at 1.4.2007, see art. 1(2) and S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Saving for Part I and other powers

6. The provisions of this Part of this Schedule are without prejudice to the provisions of Part I of this Schedule or to any power conferred on a sewerage undertaker otherwise than by the relevant sewerage provisions.

Commencement Information

- I6** Sch. 10 para. 6 wholly in operation at 1.4.2007, see art. 1(2) and S.R. 2007/194, art. 2(2), Sch. 1 Pt. II (subject to art. 3, Sch. 2)

Changes to legislation:

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Changes and effects yet to be applied to the whole Order associated Parts and Chapters:

Whole provisions yet to be inserted into this Order (including any effects on those provisions):

- art. 293(10A) inserted by [2015 c. 8 \(N.I.\) Sch. 3 para. 2\(b\)](#)