

SCHEDULES

SCHEDULE 2

THE TELECOMMUNICATIONS CODE

Arbitration in relation to linear obstacles

- 13 (1) Any objection or question which, in accordance with paragraph 12 above, is referred to arbitration under this paragraph shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties concerned or, in default of agreement, by the President of the Institution of Civil Engineers.
- (2) Where an objection under paragraph 12 above is referred to arbitration under this paragraph the arbitrator shall have the power—
- (a) to require the operator to submit to the arbitrator a plan and section in such form as the arbitrator may think requisite for the purposes of the arbitration;
 - (b) to require the observations on any such plan or section of the person who objects to the works to be submitted to the arbitrator in such form as the arbitrator may think requisite for those purposes ;
 - (c) to direct the operator or that person to furnish him with such information and to comply with such other requirements as the arbitrator may think requisite for those purposes;
 - (d) to make an award requiring modifications to the proposed works and specifying the terms on which and the conditions subject to which the works may be executed ; and
 - (e) to award such sum as the arbitrator may determine in respect of one or both of the following matters, that is to say—
 - (i) compensation to the person who objects to the works in respect of loss or damage sustained by that person in consequence of the carrying out of the works, and
 - (ii) consideration payable to that person for the right to carry out the works.
- (3) Where a question as to compensation in respect of emergency works is referred to arbitration under this paragraph, the arbitrator—
- (a) shall have the power to direct the operator or the person who requires the payment of compensation to furnish him with such information and to comply with such other requirements as the arbitrator may think requisite for the purposes of the arbitration ; and
 - (b) shall award to the person requiring the payment of compensation such sum (if any) as the arbitrator may determine in respect of the loss or damage sustained by that person in consequence of the carrying out of the emergency works in question.
- (4) The arbitrator may treat compliance with any requirement made in pursuance of sub-paragraph (2)(a) to (c) or (3)(a) above as a condition of his making an award.

Status: This is the original version (as it was originally enacted).

- (5) In determining what award to make on a reference under this paragraph, the arbitrator shall have regard to all the circumstances and to the principle that no person should unreasonably be denied access to a telecommunication system.
- (6) For the purposes of the making of an award under this paragraph—
 - (a) the references in sub-paragraphs (2)(e) and (3)(b) above to loss shall, in relation to a person carrying on a railway, canal or tramway undertaking, include references to any increase in the expenses of carrying on that undertaking; and
 - (b) the consideration mentioned in sub-paragraph (2)(e) above shall be determined on the basis of what would have been fair and reasonable if the person who objects to the works had given his authority willingly for the works to be executed on the same terms and subject to the same conditions (if any) as are contained in the award.
- (7) In the application of this paragraph to Scotland, the reference to an arbitrator shall have effect as a reference to an arbiter and the arbiter may and, if so directed by the Court of Session, shall state a case for the decision of that Court on any question of law arising in the arbitration.
- (8) In the application of this paragraph to Northern Ireland, the Arbitration Act (Northern Ireland) 1937 shall apply in relation to an arbitration under this paragraph as if this code related exclusively to matters in respect of which the Parliament of Northern Ireland had power to make laws.