

SCHEDULES

SCHEDULE 5

Section 13(2).

DRIVER INFORMATION SYSTEMS: UNDERTAKERS' WORKS

Preliminary

- 1 The following provisions of this Schedule apply where a relevant undertaker is proposing to execute any undertaker's works which involve or are likely to involve a temporary or permanent alteration of any system apparatus of a licensed operator of a driver information system kept installed in, upon, under, over, along or across any land.

Notice of proposed works

- 2 (1) The relevant undertaker shall, not less than 10 days before the works are commenced, give the operator a notice specifying the nature of the undertaker's works, the alteration or likely alteration involved and the time and place at which the works will be commenced.
- (2) This paragraph shall not apply in relation to any emergency works of which the relevant undertaker gives the operator notice as soon as practicable after commencing the works.

Counter-notices

- 3 Where a notice has been given under paragraph 2 above by a relevant undertaker to the operator, the operator may within the period of 10 days beginning with the giving of the notice give the relevant undertaker a counter-notice which may state either—
- (a) that the operator intends himself to make any alterations made necessary or expedient by the proposed undertaker's works; or
 - (b) that he requires the undertaker in making any such alteration to do so under the supervision and to the satisfaction of the operator.
- 4 Where a counter-notice given under paragraph 3 above states that the operator intends himself to make any alteration—
- (a) the operator shall (subject to paragraph 6 below) have the right, instead of the relevant undertaker, to execute any works for the purpose of making that alteration; and
 - (b) any expenses incurred by the operator in or in connection with the execution of those works and the amount of any loss or damage sustained by the operator in consequence of the alteration shall be recoverable by the operator from the undertaker in any court of competent jurisdiction.
- 5 Where a counter-notice given under paragraph 3 above states that any alteration is to be made under the supervision and to the satisfaction of the operator—

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- (a) the relevant undertaker shall not make the alteration except as required by the notice or under paragraph 6 below; and
- (b) any expenses incurred by the operator in or in connection with the provision of that supervision and the amount of any loss or damage sustained by the operator in consequence of the alteration shall be recoverable by the operator from the undertaker in any court of competent jurisdiction.

Execution of works

- 6 Where—
- (a) no counter-notice is given under paragraph 3 above, or
 - (b) the operator, having given a counter-notice falling within that paragraph, fails within a reasonable time to make any alteration made necessary or expedient by the proposed undertaker's works or, as the case may be, unreasonably fails to provide the required supervision,
- the relevant undertaker may himself execute works for the purpose of making the alteration or, as the case may be, may execute such works without the supervision of the operator; but in either case the undertaker shall execute the works to the satisfaction of the operator.

Penalty

- 7 (1) If the relevant undertaker or any of his agents—
- (a) executes any works without the notice required by paragraph 2 above having been given, or
 - (b) fails without reasonable excuse to comply with any reasonable requirement of the operator under this Schedule,
- he shall be guilty of an offence.
- (2) A person guilty of an offence under this paragraph shall be liable on summary conviction to a fine which—
- (a) if the service provided by the operator's system is interrupted by the works or failure, shall not exceed level 4 on the standard scale; and
 - (b) if that service is not so interrupted, shall not exceed level 3 on the standard scale.

Definitions

- 8 In this Schedule—
- “relevant undertaker” means—
- (a) any person or authority authorised by or under any Act (whether public general or local) to carry on any railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking;
 - (b) any person to whom the telecommunications code is applied by a licence under section 7 of the Telecommunications Act 1984 authorising him to run a telecommunication system;
 - (c) any public gas supplier (within the meaning of Part I of the Gas Act 1986);

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- (d) any holder of a licence under Part I of the Electricity Act 1989 who is entitled to exercise any power conferred by paragraph 1 or 2 of Schedule 4 to that Act;
- (e) The National Rivers Authority or any water undertaker or sewerage undertaker;
- (f) any other licensed operator of a driver information system; or
- (g) any person to whom this Schedule is applied by any Act passed after this Act;

“undertaker’s works” means—

- (a) in relation to a relevant undertaker falling within paragraph (a) above, any works which he is authorised to execute for the purpose of, or in connection with, the carrying on by him of the undertaking mentioned in that paragraph;
- (b) in relation to a relevant undertaker falling within paragraph (b) above, any works which he is authorised to execute for the purposes of, or in connection with, a telecommunication system run by him;
- (c) in relation to a relevant undertaker falling within paragraph (c) above, any works which he is authorised to execute for the purposes of, or in connection with, his supplying gas as a public gas supplier;
- (d) in relation to a relevant undertaker falling within paragraph (d) above, any works which he is authorised to execute for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on;
- (e) in relation to a relevant undertaker falling within paragraph (e) above, any works which that Authority or undertaker has power to execute for purposes connected with the carrying on of its functions;
- (f) in relation to a relevant undertaker falling within paragraph (f) above, any works which he is authorised to execute for the purposes of, or in connection with, a driver information system operated by him; and
- (g) in relation to a relevant undertaker falling within paragraph (g) above, the works for the purposes of which this Schedule is applied to him.