

## SCHEDULES

### SCHEDULE 15

#### PROTECTIVE PROVISIONS

##### PART IV

###### PROTECTION OF TELECOMMUNICATIONS OPERATORS

- 1 (1) The following provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the nominated undertaker and telecommunications operator, have effect.
- (2) In this Part of this Schedule—
  - “the authorised works” means the works authorised by Part I of this Act;
  - “construction” includes installation and “construct” shall be construed accordingly;
  - “telecommunications code” means the telecommunications code contained in Schedule 2 to the Telecommunications Act 1984;
  - “telecommunications operator” means the operator of a telecommunications code system; and
  - “operator”, “telecommunication apparatus”, “telecommunications code system” and “telecommunication system” have the same meanings as in Schedule 4 to the Telecommunications Act 1984.
- 2 (1) Paragraph 21 of the telecommunications code shall not apply for the purposes of the authorised works to the extent that such works are regulated by Part XI of the Town and Country Planning Act 1990, sections 84 and 85 of the New Roads and Street Works Act 1991 (or regulations made under section 85 of that Act) or sub-paragraphs (3) to (8) of paragraph 4 below.
- (2) Paragraph 23 of the telecommunications code shall apply for the purposes of the authorised works, save—
  - (a) insofar as such works are regulated by the New Roads and Street Works Act 1991 or any regulation made under that Act; or
  - (b) where the nominated undertaker exercises a right under subsection (4)(b) of section 272 of the Town and Country Planning Act 1990 or under an order made under that section to remove telecommunications apparatus.
- 3 The temporary stopping up or diversion of any highway under paragraph 6 of Schedule 3 to this Act shall not affect any right of a telecommunications operator under paragraph 9 of the telecommunications code in respect of any apparatus which at the time of the stopping up or diversion is in the highway.
- 4 (1) Where a highway is stopped up under paragraph 1 or 2 of Schedule 3 to this Act, any telecommunications operator whose telecommunications apparatus is under, over, in, on, along or across that highway may exercise the same rights of access in order

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to inspect, maintain, adjust, repair or alter that apparatus as if this Act had not been passed, but nothing in this sub-paragraph shall affect any right of the nominated undertaker or the telecommunications operator to require removal of that apparatus under this Part of this Schedule or the power of the nominated undertaker to alter apparatus in accordance with paragraph 23 of the telecommunications code.

- (2) The nominated undertaker shall give not less than 28 days' notice in writing of its intention to stop up any highway under paragraph 1 or 2 of Schedule 3 to this Act to any telecommunications operator whose apparatus is under, over, in, on, along or across the highway.
- (3) Where a notice under sub-paragraph (2) above has been given, the telecommunications operator, if it reasonably considers that it is necessary for the safe and efficient operation and maintenance of the apparatus, may, and if reasonably requested so to do by the nominated undertaker in the notice, shall, as soon as reasonably practicable after the service of the notice—
  - (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the telecommunications operator may reasonably determine and have power to place it, or
  - (b) provide other apparatus in substitution for the existing apparatus and place it in such other position as aforesaid.
- (4) Subject to the following provisions of this paragraph the nominated undertaker shall pay to any telecommunications operator an amount equal to the cost reasonably incurred by the telecommunications operator in or in connection with—
  - (a) the execution of relocation works required in consequence of the stopping up of the highway, and
  - (b) the doing of any other work or thing rendered necessary by the execution of relocation works.
- (5) If in the course of the execution of relocation works under sub-paragraph (3) above—
  - (a) apparatus of better type, greater capacity or greater dimensions is placed in substitution for existing apparatus of worse type, smaller capacity or smaller dimensions, except where this has been solely due to using the nearest currently 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 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 nominated undertaker, or, in default of agreement, is not determined by arbitration to be necessary in consequence of the construction of the authorised works in order to ensure the continued efficient operation of the telecommunications system of the telecommunications operator 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 existing depth, as the case may be, the amount which apart from this paragraph would be payable to the telecommunications operator by virtue of sub-paragraph (4) above shall be reduced by the amount of that excess.

- (6) For the purposes of sub-paragraph (5) above—
  - (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions

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- 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 (in either case of such type, capacity and dimensions as shall reasonably be appropriate) shall be treated as if it also had been agreed or had been so determined.
- (7) The amount which apart from this sub-paragraph would be payable to a telecommunications operator in respect of works by virtue of sub-paragraph (4) above (and having regard, where relevant, to sub-paragraph (5) above) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7½ years earlier so as to confer on the telecommunications operator 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.
- (8) Sub-paragraphs (4) to (7) above shall not apply where the authorised works constitute major transport works or major highway works for the purpose of Part III of the New Roads and Street Works Act 1991 (including that provision as applied by paragraph 8 of Schedule 3 to this Act), but instead—
- (a) the allowable costs of any relocation works shall 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 shall be borne by the nominated undertaker and the telecommunications operator in such proportions as may be prescribed by any such regulations.
- 5 (1) Subject to sub-paragraphs (2) to (4) below, if by reason or in consequence of the construction of the authorised works or any subsidence resulting from any of those works, any damage is caused to any telecommunications apparatus, other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works, or property of the telecommunications operator, or there is any interruption in the supply of the service provided by the telecommunications operator, the nominated undertaker shall bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and shall—
- (a) make reasonable compensation to the telecommunications operator for loss sustained by it, and
- (b) indemnify the telecommunications operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, the operator, by reason or in consequence of any such damage or interruption.
- (2) Sub-paragraph (1) above shall not apply to any apparatus in respect of which the relations between the nominated undertaker and the telecommunications operator are regulated by the provisions of Part III of the New Roads and Street Works Act 1991 or to any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised works.
- (3) Nothing in sub-paragraph (1) above shall impose any liability on the nominated undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the telecommunications operator, its officers, servants, contractors or agents.

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- (4) The telecommunications operator shall give the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the consent of the nominated undertaker which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- 6 Any dispute arising under this Part of this Schedule shall be determined by an arbitrator who shall be appointed by agreement between the parties or, in default of such agreement, shall be the Secretary of State.