

## SCHEDULE 2

Articles 7(6) and 31

### PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC

1.—(1) Subject to the following provisions of this paragraph—

- (a) sections 271 to 274 of the 1990 Act (Extinguishment of rights of statutory undertakers, etc.) shall apply in relation to any land acquired or appropriated by the undertaker under this Order;
- (b) all such other provisions of the 1990 Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly; and
- (c) for the purposes of this Order, any references to the appropriate Minister contained in the sections of the 1990 Act which are referred to in sub-paragraphs (a) and (b) above, shall have effect as references to the Secretary of State.

(2) Where any apparatus of public utility undertakers or of a public communications provider is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act for the purposes of this Order, the undertaker shall compensate any person who is the owner or occupier of premises supplied by that apparatus for expenditure reasonably incurred in connecting the premises to any other apparatus from which a similar supply can be received.

(3) Where a public sewer is removed in pursuance of a notice or order given or made for the purposes of this Order, under section 271, 272 or 273 of the 1990 Act, sub-paragraph (2) shall not apply, but the undertaker shall compensate any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer, or
- (b) the owner of a private sewer which communicated with that sewer,

for expenditure reasonably incurred by him in causing his drain or sewer to communicate with any other public sewer or with a private sewage disposal plant.

(4) The provisions of the 1990 Act referred to in sub-paragraph (1), as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which paragraph 2 of this Schedule or Part III of the 1991 Act applies.

(5) In this paragraph—

“public communications provider” has the meaning given by section 151(1) of the Communications Act 2003(1); and

“public utility undertakers” has the meaning given by section 329(1) of the Highways Act 1980.

2.—(1) Except as provided by this paragraph, where a street is stopped up or services diverted under the provisions of this Order, any statutory undertaker whose apparatus is placed under, in, upon, over, along or across the street, shall have the same powers and rights in respect of that apparatus as if this Order had not been made.

(2) Where, under the provisions of this Order, a street is stopped up or services diverted, any statutory undertaker whose apparatus is placed under, in, upon, over, along or across the street may remove the apparatus and place it, or other apparatus provided in substitution for it, in such other position as the statutory undertaker may reasonably determine and have power to place it;

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(1) 2003 c. 21.

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(3) If reasonably requested to do so by the undertaker, the statutory undertaker shall remove his apparatus and provide other apparatus in substitution for it.

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

- (a) the execution of relocation works required in consequence of the stopping up of the street; 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 (2) or (3)—

- (a) apparatus of better type, greater capacity or greater dimensions is placed in substitution for existing apparatus; or
- (b) existing apparatus or apparatus which has been substituted for it is placed at a greater depth;

the provisions of paragraph (6) shall apply.

(6) Unless the substitutions referred to in sub-paragraph (5) above have been agreed to by the undertaker or determined to be necessary by arbitration, any costs incurred by the undertaker in consequence of the substitutions shall be deducted from the amount due to the statutory undertaker under sub-paragraph (4) above.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as placing apparatus of greater dimensions in substitution for existing apparatus; and
- (b) where the provision of a joint in a cable is agreed, or is determined by arbitration to be necessary, the consequential provision of a joining chamber or of a manhole shall be treated as if it also had been agreed or had been so determined.

(8) Where under sub-paragraph (2) or (3) original apparatus is replaced by substituted apparatus and the original apparatus was put in place more than seven years and six months before the substitution was made, any amount due under sub-paragraph (4) above shall be reduced by the amount which represents the financial benefit of the substitution to the statutory undertaker.

(9) For the purposes of sub-paragraph (8)—

- (a) the original apparatus shall be regarded as put in place on the day after the works to put it in place were completed;
- (b) the substitution shall be regarded as made on the day after the works to put the substituted apparatus in place are completed;
- (c) regulation 7 of the Street Works (Sharing of Costs of Works) (England) Regulations 2000<sup>(2)</sup> and the Code of Practice referred to in that regulation shall apply for the purpose of determining the amount of the financial benefit of the substitution to the statutory undertaker;
- (d) “original apparatus” means the apparatus which is replaced by other apparatus; and
- (e) “substituted apparatus” means the apparatus which replaces the original apparatus.

(10) Sub-paragraphs (4) to (9) shall not apply where the authorised works constitute major transport works as defined by section 91(2) of the 1991 Act, and—

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(2) [S.I. 2000/3314](#).

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- (a) the allowable costs of the relocation works shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and the Street Works (Sharing of Costs of Works) (England) Regulations 2000; and
  - (b) the allowable costs shall be borne by the undertaker and the statutory undertaker in such proportions as may be prescribed by those regulations.
- (11) In this paragraph—
- “relocation works” means works executed, or apparatus provided, under sub-paragraph (2) or (3); and
- “statutory undertaker” means a statutory undertaker within the meaning given by section 329(1) of the Highways Act 1980 or a public communications provider as defined by section 151(1) of the Communications Act 2003.