

SCHEDULE 12

Protective provisions

PART 3

Protection for operators of electronic communications code networks

1. The provisions of this Part have effect for the protection of an operator unless otherwise agreed in writing between the undertaker and the operator.

Commencement Information

II Sch. 12 Pt. 3 para. 1 in force at 7.9.2016, see [art. 1\(2\)](#)

2. In this Part—

“conduit system” has the same meaning as in the electronic communications code; and references to providing a conduit system must be construed in accordance with paragraph 1(3A) of the code⁽¹⁾;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽²⁾;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network that the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“operator” means the operator of an electronic communications code network;

“relevant undertaker” means—

- (a) in relation to authorised development that is Project A works or associated development or ancillary works relating to Project A works, Optimus Wind;
- (b) in relation to authorised development that is Project B works or associated development or ancillary works relating to Project B works, Breesea; and
- (c) in relation to authorised development that is shared works or associated development or ancillary works relating to shared works, Optimus Wind and Breesea.

Commencement Information

I2 Sch. 12 Pt. 3 para. 2 in force at 7.9.2016, see [art. 1\(2\)](#)

(1) Paragraph 1(3A) was added to the code (Schedule 2 to the Telecommunications Act 1984) by paragraph 4 of Schedule 3 to the Communications Act 2003.

(2) “The electronic communications code” is defined in section 106(1).

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3. Paragraph 23 of Schedule 2 to the Telecommunications Act 1984⁽³⁾ (which provides a procedure for certain cases where works involve the alteration of electronic communications apparatus) applies in relation to the exercise of the powers of article 28 (statutory undertakers).

Commencement Information

I3 Sch. 12 Pt. 3 para. 3 in force at 7.9.2016, see [art. 1\(2\)](#)

4.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development, its construction or any subsidence resulting from that development—

(a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or other property of an operator); or

(b) there is any interruption in the supply of the service provided by an operator,

the relevant undertaker must—

(c) bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply;

(d) make reasonable compensation to an operator for loss sustained by it; and

(e) indemnify an operator against claims, demands, proceedings, costs, damages and expenses that may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any claim or demand, and no settlement or compromise of the claim or demand may be made without the consent of the undertaker which, if it withholds consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 41 (arbitration).

Commencement Information

I4 Sch. 12 Pt. 3 para. 4 in force at 7.9.2016, see [art. 1\(2\)](#)

5. This Part does not apply to any apparatus in respect of which the relations between the undertaker and an operator are regulated by Part 3 of the 1991 Act.

Commencement Information

I5 Sch. 12 Pt. 3 para. 5 in force at 7.9.2016, see [art. 1\(2\)](#)

(3) 1984 c.12.

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

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

- Sch. 1 Pt.03 para. 6(l) words substituted by [S.I. 2016/1104 Sch.](#)
- Sch. 12 Pt. 6 para. 5(a) words substituted by [S.I. 2016/1154 Sch. 29 Pt. 2 para. 118\(4\)](#)