

SCHEDULES

SCHEDULE 9

PROTECTION OF INTERESTS

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

14. For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between the undertaker and the operator.

15. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003⁽¹⁾;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system are to be construed in accordance with paragraph 1(3A)⁽²⁾ (interpretation of code) of that code;

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

“the electronic communications code” has the same meaning as in Chapter 1 (electronic communications, networks and services) of Part 2 of the 2003 Act⁽³⁾;

“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 (application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the undertaker 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; and

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

16. The exercise of the powers conferred by article 30 (statutory undertakers) is subject to paragraph 23 of Schedule 2 (undertaker’s works) to the Telecommunication Act 1984⁽⁴⁾.

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

(1) 2003 c. 21.

(2) Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003.

(3) See section 106 of the 2003 Act.

(4) 1984 c. 12. Paragraph 23 was amended by section 190 of, and paragraph 68 of Schedule 25 and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15), section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and section 106(2) of, and paragraphs 1, 5(d) and 8 of Schedule 3 to, the Communications Act 2003.

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- (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 undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, 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 such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker who, if such consent is withheld, 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 Part of this Schedule must be referred to and settled by arbitration under article 42 (arbitration).

18. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

19. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus already laid or erected in land belonging to the undertaker on the date on which this Order is made.