

SCHEDULES

SCHEDULE 8

Article 35

PROTECTION FOR OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

1.—(1) For the protection of any operator, the following provisions have effect, unless otherwise agreed in writing between Network Rail and the operator.

(2) In this Schedule—

“BT” means British Telecommunications plc, Company No. 01800000, whose registered office is at 81 Newgate Street, London, EC1A 7AJ;

“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)(1) 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 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 which 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; and

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

2. The temporary stopping up or diversion of any highway under article 9 (temporary stopping up of streets) does not affect any right of the operator under paragraph 9(3) of the electronic communications code to maintain any apparatus which, at the time of the stopping up or diversion, is in that highway.

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

- (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

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

(2) See section 106.

(3) Paragraph 9 was amended by paragraph 115 of part 4 of Schedule 8 to the New Roads and Street Works Act 1991 (c. 22), paragraphs 1 and 5(c) of Schedule 3 and paragraph 1 of Schedule 19 to the Communications Act 2003, S.I. 1993/3160 and S.I. 1995/3210.

Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.

(b) there is any interruption in the supply of the service provided by an operator, Network Rail must bear and pay the cost reasonably incurred by that operator in making good such damage or restoring the supply and must—

- (i) make reasonable compensation to that operator for loss sustained by it; and
- (ii) indemnify that operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, that operator by reason, or in consequence of, any such damage or interruption.

(2) Sub-paragraph (1) does not apply to—

- (a) any electronic communications apparatus in respect of which the relations between Network Rail and the operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) 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) imposes any liability on Network Rail 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.

(4) An operator must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand must be made without the consent of Network Rail which, if it withholds such consent, must have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

4. Where any railway protection works are constructed by Network Rail under article 20 (cases where powers of acquisition limited to railway protection rights) on any land or buildings belonging to BT—

- (a) such railway protection works must be maintained by and at the expense of Network Rail for a period of 12 months from the completion of such railway protection works;
- (b) at the expiry of that 12 month period Network Rail must pay BT a capitalised sum representing the costs which may be expected to be reasonably incurred by BT in maintaining such railway protection works; and
- (c) subject to Network Rail making the payment under sub-paragraph (b) such railway protection works must be maintained by and at the expense of BT.

5. Any difference arising between Network Rail, an operator or BT under this Schedule must be referred to and settled by arbitration under article 39 (arbitration).