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SCHEDULES

SCHEDULE 5

PROTECTIVE PROVISIONS

FOR PROTECTION OF TELECOMMUNICATIONS OPERATORS

- 4 For the protection of telecommunications operators the following provisions shall, unless otherwise agreed in writing between the Corporation and the telecommunications operator concerned, have effect:—
- (1) In this paragraph unless the contrary intention appears expressions defined in the Telecommunications Act 1984 have the same meanings as in that Act and—
 - “apparatus” has the same meaning as in Part III of the New Roads and Street Works Act 1991; and
 - “relocation works” means works executed, or apparatus provided, under sub-paragraph (5) below:
 - (2) The temporary stopping up or diversion of any street under section 18 (Temporary stoppage of streets) of this Act shall not affect any right of a telecommunications operator under paragraph 9 of the telecommunications code (contained in Schedule 2 to the Telecommunications Act 1984) to inspect, maintain, adjust, repair or alter any apparatus which, at the time of the stopping up or diversion, is in that street:
 - (3) Where a street is stopped up, diverted or substituted under section 19 (Stopping up streets without providing substitute) or section 20 (Stopping up streets in case of diversion or substitution) of this Act any telecommunications operator whose apparatus is under, in, upon, over, along or across the street shall have the same powers and rights in respect of that apparatus, subject to the provisions of this paragraph, as if this Act had not been passed:
 - (4) The Corporation shall give not less than 28 days' notice in writing of their intention to stop up, divert or substitute any street under section 19 (Stopping up streets without providing substitute) or section 20 (Stopping up streets in case of diversion or substitution) of this Act to any telecommunications operator whose apparatus is under, in, upon, over, along or across the street:
 - (5) Where a notice under sub-paragraph (4) above has been given, the telecommunications operator may, and if reasonably requested so to do by the Corporation in the notice, shall, as soon as reasonably practicable from 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 position as aforesaid:

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- (6) Subject to the following provisions of this paragraph, the Corporation 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, diversion or substitution of the street, and
 - (b) the doing of any other work or thing rendered necessary by the execution of relocation works:
- (7) If in the course of the execution of relocation works under sub-paragraph (5) above—
- (a) apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, or smaller capacity or of 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 the 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 Corporation, or, in default of agreement, is not determined by arbitration to be necessary, 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 (6) above shall be reduced by the amount of that excess.
- (8) For the purposes of sub-paragraph (7) above—
- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as placing of apparatus of greater dimensions than those of the existing apparatus, 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 shall be treated as if it also had been agreed or had been so determined:
- (9) An amount which apart from this sub-paragraph would be payable to a telecommunications operator in respect of works by virtue of sub-paragraph (6) above (and having regard, where relevant, to sub-paragraph (7) 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 as calculated in accordance with the Code of Practice entitled “Measures Necessary Where Apparatus is Affected by Major Works (Diversionary Works)” and dated June 1992, and approved by the Secretary of State on 30th June 1992 as revised and reissued from time to time.
- (10) Sub-paragraphs (6) to (9) above shall not apply where the authorised works constitute major transport works for the purposes of Part III of the New Roads and Street Works Act 1991, but instead—
- (a) the allowable costs of the 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

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- (b) the allowable costs shall be borne by the Corporation and the telecommunications operator in such proportions as may be prescribed by any such regulations.