

SCHEDULES

SCHEDULE 2

THE TELECOMMUNICATIONS CODE

Undertaker's works

- 23 (1) The following provisions of this paragraph apply where a relevant undertaker is proposing to execute any undertaker's works which involve or are likely to involve a temporary or permanent alteration of any telecommunication apparatus kept installed on, under or over any land for the purposes of the operator's system.
- (2) The relevant undertaker shall, not less than 10 days before the works are commenced, give the operator a notice specifying the nature of the undertaker's works, the alteration or likely alteration involved and the time and place at which the works will be commenced.
- (3) Sub-paragraph (2) above shall not apply in relation to any emergency works of which the relevant undertaker gives the operator notice as soon as practicable after commencing the works.
- (4) Where a notice has been given under sub-paragraph (2) above by a relevant undertaker to the operator, the operator may within the period of 10 days beginning with the giving of the notice give the relevant undertaker a counter-notice which may state either—
- (a) that the operator intends himself to make any alteration made necessary or expedient by the proposed undertaker's works ; or
 - (b) that he requires the undertaker in making any such alteration to do so under the supervision and to the satisfaction of the operator.
- (5) Where a counter-notice given under sub-paragraph (4) above states that the operator intends himself to make any alteration—
- (a) the operator shall (subject to sub-paragraph (7) below) have the right, instead of the relevant undertaker, to execute any works for the purpose of making that alteration; and
 - (b) any expenses incurred by the operator in or in connection with the execution of those works and the amount of any loss or damage sustained by the operator in consequence of the alteration shall be recoverable by the operator from the undertaker in any court of competent jurisdiction.
- (6) Where a counter-notice given under sub-paragraph (4) above states that any alteration is to be made under the supervision and to the satisfaction of the operator—
- (a) the relevant undertaker shall not make the alteration except as required by the notice or under sub-paragraph (7) below; and
 - (b) any expenses incurred by the operator in or in connection with the provision of that supervision and the amount of any loss or damage sustained by the

Status: This is the original version (as it was originally enacted).

operator in consequence of the alteration shall be recoverable by the operator from the undertaker in any court of competent jurisdiction.

(7) Where—

- (a) no counter-notice is given under sub-paragraph (4) above, or
- (b) the operator, having given a counter-notice falling within that sub-paragraph, fails within a reasonable time to make any alteration made necessary or expedient by the proposed undertaker's works or, as the case may be, unreasonably fails to provide the required supervision,

the relevant undertaker may himself execute works for the purpose of mating the alteration or, as the case may be, may execute such works without the supervision of the operator; but in either case the undertaker shall execute the works to the satisfaction of the operator.

(8) If the relevant undertaker or any of his agents—

- (a) executes any works without the notice required by sub-paragraph (2) above having been given, or
- (b) unreasonably fails to comply with any reasonable requirement of the operator under this paragraph,

he shall, subject to sub-paragraph (9) below, be guilty of an offence and liable on summary conviction to a fine which—

- (i) if the service provided by the operator's system is interrupted by the works or failure, shall not exceed level 4 on the standard scale ; and
- (ii) if that service is not so interrupted, shall not exceed level 3 on the standard scale.

(9) Sub-paragraph (8) above does not apply to a Northern Ireland department.

(10) In this paragraph—

" relevant undertaker " means—

- (a) any person (including a local authority) authorised by any Act (whether public general or local) or by any order or scheme made under or confirmed by any Act to carry on—
 - (i) any railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking ;
 - (ii) any undertaking for the supply of gas or electricity ; or
 - (iii) any undertaking for the supply of water or the disposal of sewage ;
- (b) any person (apart from the operator) to whom this code is applied by a licence under section 7 of this Act; and
- (c) any person to whom this paragraph is applied by any Act amended by or under or passed after this Act;

" undertaker's works " means—

- (a) in relation to a relevant undertaker falling within paragraph (a) of the preceding definition, any works which that undertaker is authorised to execute for the purposes of, or in connection with, the carrying on by him of the undertaking mentioned in that paragraph ;
- (b) in relation to a relevant undertaker falling within paragraph (b) of that definition, any works which that undertaker is authorised to execute by or in accordance with any provision of this code ; and

Status: This is the original version (as it was originally enacted).

- (c) in relation to a relevant undertaker falling within paragraph (c) of that definition, the works for the purposes of which this paragraph is applied to that undertaker.
- (11) The application of this paragraph by virtue of paragraph (c) of each of the definitions in sub-paragraph (10) above to any person for the purposes of any works shall be without prejudice to its application by virtue of paragraph (a) of each of those definitions to that person for the purposes of any other works.