

SCHEDULES

SCHEDULE 33

PROTECTIVE PROVISIONS

PART 3

ELECTRONIC COMMUNICATIONS CODE NETWORKS

Modifications etc. (not altering text)

- C1** Sch. 33 Pt. 3: functions transferred (3.5.2023) by [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), arts. 1(2), **9(5)** (with art. 17)

- 35 (1) Where a highway is stopped up under paragraph 2 or 3 of Schedule 4, any operator of an electronic communications code network whose electronic communications apparatus is under, over, in, on, along or across that highway may exercise the same rights of access in order to inspect, maintain, adjust, repair or alter that apparatus as if this Act had not been passed, but this is subject to sub-paragraph (2).
- (2) Nothing in sub-paragraph (1) affects any right of the nominated undertaker or the operator to require removal of that apparatus under this Part or the power of the nominated undertaker to alter or remove apparatus in accordance with paragraph 23 of the electronic communications code.
- (3) The nominated undertaker must give not less than 28 days' notice of its intention to stop up any highway under paragraph 2 or 3 of Schedule 4 to any operator of an electronic communications code network whose apparatus is under, over, in, on, along or across the highway.
- (4) Where a notice under sub-paragraph (3) has been given, the operator, if it reasonably considers that it is necessary for the safe and efficient operation and maintenance of the apparatus, may, and if reasonably requested so to do by the nominated undertaker in the notice, must, as soon as reasonably practicable after 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 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 other position as described in paragraph (a).
- (5) Subject to the following provisions of this paragraph the nominated undertaker must pay to any operator of an electronic communications code network an amount equal to the cost reasonably incurred by the operator in or in connection with—

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- (a) the execution of relocation works required in consequence of the stopping up of the highway, and
 - (b) the doing of any other work or thing rendered necessary by the execution of relocation works.
- (6) Sub-paragraph (7) applies where—
- (a) in the course of the execution of relocation works under sub-paragraph (4)—
 - (i) apparatus of better type, greater capacity or greater dimensions is placed in substitution for existing apparatus of worse type, smaller capacity or smaller dimensions, except where this has been solely due to using the nearest currently available type, capacity or dimension, or
 - (ii) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which existing apparatus was, and
 - (b) 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 nominated undertaker, or, in default of agreement, is not determined to be necessary in consequence of the construction of the authorised works in order to ensure the continued efficient operation of the electronic communications code network of the operator.
- (7) If the execution of the relocation works involves cost 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 operator by virtue of sub-paragraph (5) is to be reduced by the amount of that excess.
- (8) For the purposes of sub-paragraphs (6) and (7)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus except in a case where the apparatus as so extended provides more than an equivalent service, 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 (in either case of such type, capacity and dimensions as is reasonably appropriate) is to be treated as if it also had been agreed or had been so determined.
- (9) The amount which apart from this sub-paragraph would be payable to an operator in respect of works by virtue of sub-paragraph (5) (and having regard, where it applies, to sub-paragraph (7)) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven and a half years earlier so as to confer on the 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.
- (10) Sub-paragraphs (5) to (9) do not apply where the authorised works constitute major transport works or major highway works for the purpose of Part 3 of the New Roads and Street Works Act 1991 (including that provision as applied by paragraph 8 of Schedule 4 to this Act), but instead—
- (a) the allowable costs of any relocation works are to be determined in accordance with section 85 of that Act (sharing of costs of necessary

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- measures) and any regulations for the time being having effect under that section, and
- (b) the allowable costs are to be borne by the nominated undertaker and the operator in such proportions as may be prescribed by any such regulations.

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