

SCHEDULES

SCHEDULE 9

Articles 9, 10, 32 and 48

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

Apparatus of statutory undertakers, etc. on land acquired

1.—(1) Sections 271 to 274 of the 1990 Act (power to extinguish rights of statutory undertakers, etc. and power of statutory undertakers, etc. to remove or re-site apparatus) shall apply in relation to any land acquired or appropriated by the undertaker under this Order subject to the following provisions of this paragraph; and all such other provisions of that Act as apply for the purposes of those provisions (including sections 275 to 278, which contain provisions consequential on the extinguishment of any rights under sections 271 and 272, and sections 279(2) to (4), 280 and 282, which provide for the payment of compensation) shall have effect accordingly.

(2) In the provisions of the 1990 Act, as applied by sub-paragraph (1) above, references to the appropriate Minister are references to the Secretary of State.

(3) Where any apparatus of public utility undertakers or of a public telecommunications operator is removed in pursuance of a notice or order given or made under section 271, 272 or 273 of the 1990 Act, as applied by sub-paragraph (1) above, any person who is the owner or occupier of premises to which a supply was given from that apparatus shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of effecting a connection between the premises and any other apparatus from which a supply is given.

(4) Sub-paragraph (3) above shall not apply in the case of a removal of a public sewer but where such a sewer is removed in pursuance of such a notice or order as is mentioned in that sub-paragraph, any person who is—

- (a) the owner or occupier of premises the drains of which communicated with that sewer, or
- (b) the owner of a private sewer which communicated with that sewer,

shall be entitled to recover from the undertaker compensation in respect of expenditure reasonably incurred by him, in consequence of the removal, for the purpose of making his drain or sewer communicate with any other public sewer or with a private sewage disposal plant.

(5) The provisions of the 1990 Act mentioned in sub-paragraph (1) above, as applied by that sub-paragraph, shall not have effect in relation to apparatus as respects which paragraph 2 below or Part III of the 1991 Act applies.

(6) In this paragraph—

“the 1990 Act” means the Town and Country Planning Act 1990(1);

“public telecommunications operator” means—

- (a) a person authorised, by a licence to which section 9 of the Telecommunications Act 1984(2) applies, to run a public telecommunications system, or

(1) 1990 c. 8.
(2) 1984 c. 12.

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

- (b) a person to whom the telecommunications code has been applied pursuant to section 10 of that Act; and
- “public utility undertakers” has the same meaning as in the Highways Act 1980⁽³⁾.

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under article 10 (permanent stopping up of streets) of this Order any statutory utility 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 Order had not been made.

(2) The undertaker shall give not less than 28 days' notice in writing of its intention to stop up any street under article 10 of this Order to any statutory utility whose apparatus is under, in, upon, over, along or across that street.

(3) Where notice under sub-paragraph (2) above has been given any statutory utility whose apparatus is under, in, upon, over, along or across the street may and, if reasonably requested so to do by the undertaker, shall—

- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the statutory utility 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.

(4) Subject to the following provisions of this paragraph, the undertaker shall pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with:—

- (a) the execution of relocation works required in consequence of the stopping up of the street, and
- (b) the doing of any other work or thing rendered necessary by the execution of relocation works.

(5) If in the course of the execution of relocation works under sub-paragraph (3) above—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions except where this has been solely due to using the nearest 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 undertaker, 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 sub-paragraph would be payable to the statutory utility by virtue of sub-paragraph (4) above shall be reduced by the amount of that excess.

(6) For the purposes of sub-paragraph (5) above—

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus, and

(3) 1980 c. 66.

- (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.

(7) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (4) above (and having regard, where relevant, to sub-paragraph (5) above) shall, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7.5 years earlier so as to confer on the utility 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 re-issued from time to time.

(8) Sub-paragraphs (4) to (7) above shall not apply where the authorised works constitute major transport works for the purposes of Part III of the 1991 Act, 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
- (b) the allowable costs shall be borne by the undertaker and the statutory utility in such proportions as may be prescribed by any such regulations.

(9) In this paragraph—

“apparatus” has the same meaning as in Part III of the 1991 Act;

“relocation works” means works executed, or apparatus provided, under sub-paragraph (3) above; and

“statutory utility” means a statutory undertaker for the purposes of the Highways Act 1980 or a public telecommunications operator as defined in paragraph 1(6) above.

Railway and navigation undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers under article 9 of this Order to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the Highways Act 1980):—

- (a) is under the control or management of, or is maintainable by, railway or tramway undertakers or a navigation authority, or
- (b) forms part of a level crossing belonging to any such undertakers or to such an authority or to any other person,

except with the consent of the undertakers or authority or, as the case may be, of the person to whom the level crossing belongs.

(2) Sub-paragraph (1) above shall not apply to the carrying out under this Order of emergency works, within the meaning of Part III of the 1991 Act.

(3) A consent given for the purposes of sub-paragraph (1) above may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.

(4) In this paragraph “navigation authority” means any person who has a duty or power under any enactment to work, maintain, conserve, improve or control any canal or other inland navigation, navigable river, estuary, harbour or dock.