

SCHEDULE 8

Protective provisions

PART 7

Protection for operators of electronic communications code networks

1. The provisions of this Part have effect for the protection of an operator unless otherwise agreed in writing between the undertaker and the operator.

2. In this Part—

“2003 Act” means the Communications Act 2003;

“conduit system” has the same meaning as in the electronic communications code; and references to providing a conduit system must be construed in accordance with paragraph 1(3A) of the code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽¹⁾;

“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;

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

3. The exercise of the powers referred to in article 27 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984⁽²⁾.

4.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development, its construction or 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
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must—

- (c) bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply;
- (d) make reasonable compensation to an operator for loss sustained by it; and
- (e) indemnify an operator against claims, demands, proceedings, costs, damages and expenses which may be made or taken against, or recovered from, or incurred by, an operator by reason, or in consequence of, any such damage or interruption.

(1) See section 106

(2) 1984 c.12

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(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker 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.

(3) The operator must give the undertaker reasonable notice of any claim or demand, and no settlement or compromise of the claim or demand may be made without the consent of the undertaker which, if it withholds consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this paragraph must be referred to and settled by arbitration under article 36 (arbitration).

5. This Part does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by Part 3 of the 1991 Act (street works in England and Wales); or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

6. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and an operator in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.