

SCHEDULE 13

PROTECTIVE PROVISIONS

PART 1

Protection of Operators of Electronic Communications Code Networks

1. The provisions of this Part have effect for the protection of the operators referred to in this Part, unless otherwise agreed in writing between the undertaker and the operator concerned.

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 are to be construed in accordance with paragraph 1(3A) of that 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 as defined in section 106(1) of that Act;

“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 that 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; and

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

3.—(1) Subject to sub-paragraphs (2) and (3), if, as the result of the authorised development or its construction, or of 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 bear and pay the reasonable and proper cost actually incurred by the operator in making good such damage or restoring the supply as the case may be and must make proper and reasonable compensation to an operator for any other reasonable and proper expenses, loss, damages, penalty or costs actually incurred by it.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption as far as 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 prior written notice of any claim or demand and no settlement or compromise may be made without the consent of the undertaker.

4.—(1) If in consequence of the exercise of the powers of this Order the access to the operator’s apparatus is materially obstructed, the undertaker must provide such reasonable alternative means

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of access to such apparatus as will enable the operator to operate, maintain, repair or replace or use the apparatus.

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 the provisions of Part 3 of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

6. Any difference or dispute arising between the operator and the undertaker under this Part must, unless otherwise agreed in writing between the operator and the undertaker, be referred to and settled by arbitration under article 34 (arbitration).

7.—(1) Where, under this Part or anywhere else under this Order, the operator is required to give its consent or approval in respect of any matter, that consent or approval must not be unreasonably withheld or delayed.

(2) In respect of any specified work or the acquisition of rights under or over or use of the operator's property, the operator must co-operate with the undertaker with a view to avoiding undue delay.