

SCHEDULES

SCHEDULE 5

Articles 13 and 16

PROVISIONS RELATING TO STATUTORY UNDERTAKERS, ETC.

PART 1

APPARATUS OF STATUTORY UNDERTAKERS, ETC. ON LAND ACQUIRED

1. Sections 271 to 274⁽¹⁾ (power to extinguish of rights of statutory undertakers, etc, and power of statutory undertakers etc. to remove or to re-site apparatus) of the 1990 Act apply in relation to any land acquired or appropriated by Network Rail 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⁽²⁾, which provide for the payment of compensation) have effect accordingly.

2. In the provisions of the 1990 Act, as applied by paragraph 1—

- (a) references to the appropriate Minister are references to the Secretary of State; and
- (b) references to land acquired or appropriated as mentioned in section 271(1) of the 1990 Act are references to land acquired or appropriated as mentioned in paragraph (1).

3. Where any apparatus of public utility undertakers or of a public communications provider 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 paragraph 1, any person who is the owner or occupier of premises to which a supply was given from that apparatus is entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, 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. Paragraph 3 does not apply in the case of the 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 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,

is entitled to recover from Network Rail compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making the drain or sewer belonging to that person communicate with any other public sewer or with a private sewerage disposal plant.

5. The provisions of the 1990 Act mentioned in paragraph 1, as applied by that paragraph, do not have effect in relation to apparatus as respects which Part 2 of this Schedule or Part 3 of the 1991 Act applies.

(1) Sections 272 to 274 were amended by paragraph 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(2) Section 279(3) was amended by paragraph 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003. Sections 280 and 282 were amended by S.I. 2009/1307.

Status: This is the original version (as it was originally made).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

6. In this Schedule—

“public communications provider” has the same meaning as in section 151(1) of the 2003 Act⁽³⁾; and

“public utility undertakers” has the same meaning as in the 1980 Act⁽⁴⁾.

PART 2

APPARATUS OF STATUTORY UNDERTAKERS, ETC. IN STOPPED UP STREETS

7. Where a street is stopped up under article 13 (street to be stopped up) any statutory utility whose apparatus is under, in, upon, along or across that street has the same powers and rights in respect of that apparatus, subject to the provisions of this Part of this Schedule, as if this Order had not been made.

8. Where a street is stopped up under article 13 (street to be stopped up) any statutory utility whose apparatus is under, in, upon, over, along or across that street may, and if reasonably requested to do so by Network Rail must—

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

9. Subject to the following provisions of this Part of this Schedule, Network Rail must pay to any statutory utility an amount equal to the cost reasonably incurred by the utility in or in connection with—

- (a) the execution of the 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 the relocation works.

10. If in the course of the execution of relocation works under paragraph 8—

- (a) apparatus of a better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus; 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 Network Rail, 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 paragraph would be payable to the statutory utility by virtue of paragraph 9 is to be reduced by the amount of that excess.

11. For the purposes of paragraph 10—

(3) 2003 c. 21.

(4) The definition of “public utility undertakers” was amended by section 190(3) of, and Part 1 of Schedule 27 to, the Water Act 1989 (c. 15) and section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29).

- (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; 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 is to be treated as if it also had been agreed or had been so determined.

12. An amount which, apart from this paragraph, would be payable to a statutory utility in respect of works by virtue of paragraph 9 (and having regard, where relevant, to paragraph 10) must, if the works include the placing of apparatus provided in substitution for apparatus placed more than 7 years and 6 months 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.

13. Paragraphs 9 to 12 do not apply where the authorised works constitute major transport works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act, but instead—

- (a) the allowable costs of the relocation works are to be determined in accordance with section 85 (sharing of cost of necessary measures) of that Act and any regulations for the time being having effect under that section; and
- (b) the allowable costs are to be borne by Network Rail and the statutory utility in such proportions as may be prescribed by any such regulations.

14. In this Part of this Schedule—

“apparatus” has the same meaning as in Part 3 of the 1991 Act;

“relocation works” means work executed, or apparatus provided, under paragraph 8; and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in section 151(1) (interpretation of chapter 1) of the 2003 Act.