

SCHEDULES

SCHEDULE 18

Article 52

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers etc. on land acquired

1.—(1) Sections 271 to 274(1) (extinguishment of rights of statutory undertakers etc.) 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 sub-paragraph (1), references to the appropriate Minister are references to the Secretary of State.

(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 sub-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) Sub-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 sub-paragraph (1), as applied by that sub-paragraph, do not have effect in relation to apparatus as respects which paragraph (2) or Part 3 of the 1991 Act applies.

(6) Nothing in this paragraph affects the provisions of any enactment or agreement regulating the relations between Network Rail and a public communications provider or public utility undertaker in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which the Order is made.

(7) In this paragraph—

(1) Paragraphs 103(1) and (2) of Schedule 17 to the Communications Act 2003 (c. 21).

(2) Section 279(3) was amended by paragraphs 103(1) and (2), and section 280 was amended by paragraph 104, of Schedule 17 to the Communications Act 2003 (c. 21). 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.

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

“public utility undertaker” has the same meaning as in the 1980 Act⁽³⁾.

Apparatus of statutory undertakers etc. in stopped up streets

2.—(1) Where a street is stopped up under article 14 (stopping up of streets) any statutory utility whose apparatus is under, in, upon, along or across the street has 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) Where a street is stopped up under article 14 any statutory utility whose apparatus is under, in, upon, over, along or across the 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.

(3) Subject to the following provisions of this paragraph, 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.

(4) If in the course of the execution of relocation works under sub-paragraph (2)—

- (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 sub-paragraph (3) is to be reduced by the amount of that excess.

(5) For the purposes of sub-paragraph (4)—

- (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.

(6) An amount which apart from this sub-paragraph would be payable to a statutory utility in respect of works by virtue of sub-paragraph (3) (and having regard, where relevant, to sub-paragraph (4)) must, if the works include the placing of apparatus provided in substitution for

⁽³⁾ 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).

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.

(7) Sub-paragraphs (3) to (6) 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.

(8) Nothing in this paragraph affects the provisions of any enactment or agreement regulating the relations between Network Rail and a statutory utility in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which the Order is made.

(9) In this paragraph—

- (a) “apparatus” has the same meaning as in Part 3 of the 1991 Act;
- (b) “relocation works” means work executed, or apparatus provided, under sub-paragraph (2); and
- (c) “statutory utility” means a statutory undertaker for the purposes of the 1980 Act or a public communications provider as defined in paragraph 1(7).

Railway and navigation undertakings

3.—(1) Subject to the following provisions of this paragraph, the powers under article 13 (power to execute street works) to break up or open a street are not exercisable where the street, not being a highway maintainable at public expense (within the meaning of the 1980 Act) is under the control or management of, or is maintainable by, railway undertakers or a navigation authority except with the consent of the undertakers or authority.

(2) Sub-paragraph (1) does not apply to the carrying out under this Order of emergency works, within the meaning of Part 3 of the 1991 Act.

(3) A consent given for the purpose of sub-paragraph (1) may be made subject to such reasonable conditions as may be specified by the person giving it but must 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.

(5) Nothing in this paragraph affects the provision of any enactment or agreement regulating the relations between Network Rail and a railway undertaker or a navigation authority in respect of any street to which sub-paragraph (1) applies which have effect on the date on which this Order is made.