

SCHEDULES

SCHEDULE 4

MINOR AND CONSEQUENTIAL AMENDMENTS

The Town and Country Planning (Scotland) Act 1972

- 54 (1) The Town and Country Planning (Scotland) Act 1972 shall be amended in accordance with the following provisions of this paragraph.
- (2) The power to make a development order under section 21 (development orders) shall include power—
- (a) to repeal paragraph 70 of Schedule 22 to the said Act of 1972 and sub-paragraph (13) below; and
 - (b) to make any such provision as is mentioned in that section in relation to cases in which planning permission is required by virtue of that repeal;
- and the power conferred by virtue of this sub-paragraph shall include power to make different provision for different cases.
- (3) In section 108(2) (under which provisions as to extinguishment of rights over land do not apply in relation to rights and apparatus of statutory undertakers), at the end there shall be inserted the words " or to any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or to any telecommunication apparatus kept installed for the purposes of any such system. ".
- (4) In the proviso to section 117(1) (under which the power to override servitudes etc. shall not be used to interfere with rights vested in or belonging to statutory undertakers), at the end there shall be inserted the words " or a right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system. ".
- (5) After section 180 (purchase notices in other cases) there shall be inserted the following section: —

“180A Public telecommunications operators.

In the preceding provisions of this Part of this Act and in Schedule 17 to this Act the references to statutory undertakers shall be deemed to include references to a public telecommunications operator.”.

- (6) In section 181(1)(a) (scope of provisions relating to the effect of planning proposals on the interests of owner-occupiers), for the words from " functions " to " National Coal Board " there shall be substituted the words " of the following functions, that is to say, those of a government department, local authority or statutory undertakers, or of the National Coal Board or the establishment or running by a public telecommunications operator of a telecommunication system " ; and, accordingly, in

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section 194(1) (definition of " appropriate authority ") after the word " body ", there shall be inserted the words " or person " .

(7) In section 202(3) (powers not to be exercised, among other things, to prevent statutory undertakers from having access to their works), at the end there shall be inserted the words “or

(f) to prevent the operator of any telecommunications code system from having access to any works of his under, in, on, over, along or across the highway.”.

(8) For section 209 (provision as to telegraphic lines) there shall be substituted the following section: —

“~~209~~(1) Where in pursuance of an order under section 198, 198A, 200 or 201 of this Act a highway is stopped up, diverted or changed and immediately before the date on which the order became operative there was under, in, on, over, along or across the highway any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system shall have the same powers in respect of the telecommunication apparatus as if the order had not become operative ; but any person entitled to land over which the highway subsisted shall be entitled to require the alteration of the apparatus.

(2) Where any such order provides for the improvement of a highway, other than a trunk road, and, immediately before the date on which the order became operative, there was under, in, on, over, along or across the highway any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the local highway authority shall be entitled to require the alteration of the apparatus.

This subsection does not have effect so far as it relates to the alteration of any telecommunication apparatus for the purpose of authority's works as defined in Part II of the Public Utilities Street Works Act 1950.

(3) Where an order under section 199 of this Act authorising the stopping up or diversion of any footpath or bridle-way is made by a planning authority or an order under section 203(1)(b) of this Act extinguishing a public right of way is made by a planning authority and at the time of the publication of the notice required by section 206(4) of, and Schedule 18 to, this Act any telecommunication apparatus was kept installed for the purposes of a telecommunications code system under, in, on, over, along or across the land over which the right of way subsisted—

(a) the power of the operator of the system to remove the apparatus shall, notwithstanding tie making of the order, be exercisable at any time not later than the end of the period of three months from the date on which the footpath or bridle-way is stopped up or diverted or, as the case may be, the right of way is extinguished and shall be exercisable in respect of the whole or any part of the apparatus after the end of that period if before the end of that period the operator of the system has given notice to the authority which made the order of his intention to remove the apparatus or that part of it, as the case may be ;

(b) the operator of the system may by notice given in that behalf to the authority which made the order not later than the end of the said

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- period of three months abandon the telecommunication apparatus or any part of it:
- (c) subject to paragraph (6) of this subsection, the operator of the system shall be deemed at the end of that period to have abandoned any part of the apparatus which the operator has then neither removed nor given notice of his intention to remove ;
 - (d) the operator of the system shall be entitled to recover from the authority which made the order the expense of providing, in substitution for the apparatus and any other telecommunication apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the first-mentioned apparatus, any telecommunication apparatus in such other place as the operator may require;
 - (e) where under the preceding provisions of this subsection the operator of the system has abandoned the whole or any part of any telecommunication apparatus that apparatus or that part of it shall vest in the authority which made the order and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of a telecommunications code system.
- (4) As soon as reasonably practicable after the making of any such order as is mentioned in subsection (3) above in circumstances in which that subsection applies in relation to the operator of any telecommunications code system, the authority which made the order shall give notice to the operator of the making of the order.
- (5) Paragraph 1(2) of the telecommunications code (alteration of apparatus to include moving, removal or replacement of apparatus) shall apply for the purposes of the preceding provisions of this section as it applies for the purposes of that code.
- (6) Paragraph 21 of the telecommunications code (restriction on removal of telecommunication apparatus) shall apply in relation to any entitlement conferred by this section to require the alteration, moving or replacement of any telecommunication apparatus as it applies in relation to an entitlement to require the removal of any such apparatus.”.
- (9) In relation to—
- (a) any order under section 198, 198A, 200 or 201 of the said Act of 1972 which became operative before the appointed day, and
 - (b) any case where a notice under section 206(4) of, and Schedule 18 to, that Act was published in respect of a proposed order under section 203(1)(6) or 199 of that Act before the appointed day,
- section 209 of that Act shall have effect, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (8) above.
- (10) In section 219 (extinguishment of rights of way and rights as to apparatus of statutory undertakers), after subsection (6) there shall be inserted the following subsection: —
- “(7) In subsection (1) above—
- (a) the references in paragraph (a) to a right vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to a right conferred by or in

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accordance with the telecommunications code on the operator of a telecommunications code system ; and

- (b) the reference in paragraph (b) to apparatus vested in or belonging to statutory undertakers for the purpose of the carrying on of their undertaking shall include a reference to telecommunication apparatus kept installed for the purposes of any such system ;

and for the purposes of this subsection, in this section (except, without prejudice to section 35(4) of the Telecommunications Act 1984, in those paragraphs and the words preceding them) and in sections 220, 226(2) and 227 of this Act references to statutory undertakers shall have effect as references to the operator of any such system, references, in relation to such an operator, to the carrying on of his undertaking shall have effect as references to the running of the telecommunications code system in question and references to the appropriate Minister shall have effect as references to the Secretary of State for Trade and Industry.”;

but this sub-paragraph shall not affect the said section 219 as applied by section 13 of the Opencast Coal Act 1958.

- (11) In section 221 (notice given by statutory undertakers), after subsection (6) there shall be inserted the following subsection: —

“(7) In subsection (1)(a) above the reference to apparatus vested in or belonging to statutory undertakers shall include a reference to telecommunication apparatus kept installed for the purposes of a telecommunications code system ; and, for the purposes of this subsection, in this section references (except in the said subsection (1)(a)) to statutory undertakers shall have effect as references to the operator of any such system and references to the appropriate Minister shall have effect as references to the Secretary of State for Trade and Industry.”.

- (12) The references to section 209 of the said Act of 1972 in Part XI of Schedule 22 to that Act (transitional provisions relating to highways) shall have effect as references to that section as it has effect for the purposes of that Part immediately before the coming into force of sub-paragraph (8) above.

- (13) In paragraph 70 of Schedule 22 (saving for powers of British Telecommunications), for the words from " powers " onwards there shall be substituted the words " rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system or any duty of any such operator under that code or apply to any telecommunication apparatus kept installed for the purposes of any such system. " .