

SCHEDULES

SCHEDULE 9

Protective provisions

PART 5

For the protection of operators of electronic communications code networks

1. For the protection of any operator, the following provisions are to have effect, unless otherwise agreed in writing between the undertaker and the operator.

2. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(1);

“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;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 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 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, or paragraph 17 of Schedule 18 to, the 2003 Act; and

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

3. The exercise of the powers of article 30 (statutory undertakers) are subject to paragraph 23 of Schedule 2 to the Telecommunications Act 1984(2).

4.—(1) Subject to sub-paragraphs (2) and (3), if as the result of the authorised development or their construction, or of any subsidence resulting from any of those works 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) the undertaker must bear and pay the cost reasonably and properly incurred by the operator in making good such damage.

(1) 2003 c. 21. There are amendments to the Act which are not relevant to this Order.

(2) 1984 c. 12. There are amendments to the Act which are not relevant to this Order.

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(2) Nothing in sub-paragraph (1) is to impose any liability on the undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of an operator, its officers, servants, contractors or agents.

(3) Any difference arising between the undertaker and the operator under this paragraph is to be referred to and settled by arbitration under article 35 (arbitration).

5. This Part of this Schedule 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 caused by electro-magnetic interference arising from the construction or use of the authorised development.

6. Nothing in this Part of this Schedule 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.