

SCHEDULES

SCHEDULE 9

Article 46

PROVISIONS RELATING TO STATUTORY UNDERTAKERS ETC.

Apparatus of statutory undertakers, etc. on land acquired

1.—(1) Subject to the following provisions of this paragraph, sections 271 to 274(1) (extinguishment of rights of statutory undertakers etc.) of the 1990 Act apply in relation to any land which has been acquired under this Order, or which is held by the Authority and is appropriated or used (or about to be used) by it for the purposes of this Order or for purposes connected with those provisions; 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 section 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)—

- (a) references to the appropriate Minister are references to the Secretary of State;
- (b) references to the purpose of carrying out any development with a view to which land was acquired or appropriated are references to the purpose of carrying out the authorised works; and
- (c) references to land acquired or appropriated as mentioned in section 271(1) of the 1990 Act are references to land acquired, appropriated or used as mentioned in sub-paragraph (1).

(3) Where any apparatus of public utility undertakers or of an operator of an electronic communications code network 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 the Authority 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 the Authority compensation in respect of expenditure reasonably incurred by that person, in consequence of the removal, for the purpose of making that person's drain or sewer communicate with any other public sewer or with a private sewage 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 (including that Part as applied by article 5 (application of the 1991 Act)).

(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 paragraph—

“electronic communications code” means the code set out in Schedule 3A to the Communications Act 2003⁽³⁾;

“electronic communications code network” means an electronic communications network within the meaning of the Communications Act 2003 to which the electronic communications code applies; and

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

Apparatus of statutory undertakers, etc, in stopped up streets

2.—(1) Where a street is stopped up under article 13 (stopping up of streets) any statutory utility whose apparatus is under, in, upon, over, along or across the street has the same powers and rights in respect of that apparatus, subject to the provision of this paragraph, as if this Order had not been made.

(2) Where a street is stopped up under article 13 any statutory utility whose apparatus is under, in, upon, over, along or across the street may where reasonably necessary for the efficient operation of the undertaking of the statutory utility or, if reasonably requested to do so by the Authority, 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, the Authority must pay to any statutory utility an amount equal to the cost reasonably incurred by the statutory utility in or in connection with—

- (a) the execution of 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 relocation works.

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

- (a) apparatus of better type, of greater capacity or of greater dimension is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; 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 the Authority, 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) will 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

⁽³⁾ 2003 c. 21. Schedule 3A was inserted by section 4(2) of, and Schedule 1 to, the Digital Economy Act 2017 (c. 30).

⁽⁴⁾ 1980 c. 66.

(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 apparatus placed more than 7 years and 6 months earlier so as to confer on the statutory 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-paragraph (6) does not apply to apparatus being substituted which comprises cathode protected steel mains and any other apparatus which is agreed between the Authority and the statutory utility as not being required to be replaced imminently.

(8) Sub-paragraphs (3) to (6) do not apply where—

- (a) the authorised works constitute major transport works or major highway works for the purposes of Part 3 (street works in England and Wales) of the 1991 Act (including that Part as applied by article 5 (application of the 1991 Act)); and
- (b) any relocation works carried out under paragraph (2) include replacement apparatus being placed in a street,

but instead—

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

(9) In this paragraph—

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

“relocation works” means works executed, or apparatus provided, under sub-paragraph (2); and

“statutory utility” means a statutory undertaker for the purposes of the 1980 Act or an operator of an electronic communications code network as defined in paragraph 1(6).

Application of electronic communications code

3.—(1) Part 6 of the electronic communications code does not apply for the purposes of the authorised works to the extent that such works are regulated by Part 11 of the 1990 Act, sections 84 and 85 of the 1991 Act (or regulations made under section 85 of that Act), paragraph 2 or sub-paragraph (3).

(2) Part 10 of the electronic communications code applies for the purposes of the authorised works, except—

- (a) in so far as such works are regulated by the 1991 Act or any regulation made under that Act; or
- (b) where the Authority exercises a right under subsection (4)(b) of section 272 of the 1990 Act or under an order made under that section to remove apparatus.

(3) The temporary stopping up, alteration or diversion of any highway under article 14 (temporary stopping up of streets) does not affect any the code rights of an operator of an electronic communications code network in respect of any apparatus which at the time of the stopping up or diversion is in the highway.

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(4) In this paragraph—

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

“code rights” means those rights set out in paragraph 3 of the electronic communications code;
and

“electronic communications code” and “electronic communications code network” have the same meaning as in paragraph 1(6).