

SCHEDULES

SCHEDULE 23

Section 33(2)

PARTY WALLS ETC

- 1 In this Schedule, “the 1996 Act” means the Party Wall etc Act 1996.
- 2 No notice under section 1(2) or (5) of the 1996 Act (notice before building on line of junction with adjoining land) is required before the building of any wall for Phase One purposes.
- 3 Sections 1(6) and 2 of the 1996 Act (rights of adjoining owners) do not have effect to confer rights in relation to—
 - (a) anything held by the Secretary of State or the nominated undertaker and used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act, or
 - (b) land on which there is any such thing.
- 4 No party structure notice under section 3 of the 1996 Act is required before the exercise of any right conferred by section 2 of that Act (right to repair etc party wall) for the purposes of or in connection with—
 - (a) the construction of the works authorised by this Act, or
 - (b) the maintenance of any such work during the period beginning with the date on which the work is completed and ending 5 years after the date on which it is brought into general use.
- 5 Section 6 of the 1996 Act (underpinning of adjoining buildings) does not apply in relation to a proposal to excavate, or excavate for and erect anything, for Phase One purposes.
- 6 (1) Where—
 - (a) a building owner (within the meaning of the 1996 Act) serves a notice under section 6(5) of that Act, and
 - (b) the building or structure of the adjoining owner (within the meaning of that Act) referred to in that provision is a building or structure—
 - (i) erected for Phase One purposes, or
 - (ii) situated on land held by the Secretary of State or the nominated undertaker for the purposes of the nominated undertaker’s undertaking under this Act,section 6 of that Act has effect as if it were subject to the following modifications.
 - (2) Those modifications are—
 - (a) that subsection (3) is omitted, and
 - (b) the substitution for subsections (6) and (7) of—

“(6) The notice referred to in subsection (5) (“the proposals notice”)—
 - (a) shall be accompanied by plans and sections showing—

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- (i) the site and depth of any excavation the building owner proposes to make;
 - (ii) if he proposes to erect a building or structure, its site; and
 - (b) where the notice includes a proposal to underpin or otherwise strengthen or safeguard the foundations of the building or structure of the adjoining owner, shall—
 - (i) include a detailed description of those works; and
 - (ii) specify the building owner’s programme for carrying them out.
 - (6A) The adjoining owner may serve a notice on the building owner consenting to the proposals notice.
 - (6B) Where the proposals include the carrying out of works mentioned in subsection (6)(b), the consent notice served under subsection (6A) must state whether the adjoining owner—
 - (a) is to carry out those works himself, or
 - (b) requires the works to be carried out by the building owner.
 - (7) If an owner on whom a proposals notice has been served does not serve a consent notice within the period of 14 days beginning with the day on which the proposals notice was served, he shall be deemed to have dissented from the notice and a dispute shall be deemed to have arisen between the parties.
 - (7A) Works to underpin or otherwise strengthen or safeguard the foundations of the building or structure of the adjoining owner (whether proposed in the proposals notice or otherwise) are to be carried out by the adjoining owner, unless the building owner is required to carry them out—
 - (a) by virtue of a requirement within subsection (6B)(b), or
 - (b) where a dispute is deemed to have arisen between the parties in relation to any matter, by a notice served by the adjoining owner on the building owner within the period of 14 days beginning with—
 - (i) the day on which the parties settle the dispute, or
 - (ii) the day on which an award is made under section 10 in relation to the dispute.
 - (7B) The works (whether carried out by the adjoining owner or the building owner) are to be carried out—
 - (a) at the building owner’s expense, and
 - (b) in accordance with the description and programme agreed by the parties (whether by virtue of a consent notice or in connection with the settlement of any dispute) or determined in accordance with section 10 (in the case of a dispute in relation to which an award is made under that section).”
- 7 (1) This paragraph applies where a dispute arises or is deemed to have arisen in respect of a matter connected with any work to which the 1996 Act relates and the work—
- (a) is required for Phase One purposes, or

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(b) relates to a building or structure situated on land held by the Secretary of State or the nominated undertaker for the purposes of the nominated undertaker's undertaking under this Act.

(2) In such a case, the 1996 Act has effect as if for section 10 (resolution of disputes) there were substituted—

“10 Resolution of disputes

(1) Where a dispute arises or is deemed to have arisen between a building owner and an adjoining owner in respect of any matter connected with any work to which this Act applies, the dispute is to be settled by a single arbitrator, to be—

- (a) agreed on by both parties, or
- (b) in default of agreement, appointed on the application of either party, after notice in writing to the other, by the President of the Institution of Civil Engineers.

(2) If the arbitrator—

- (a) refuses to act;
 - (b) neglects to act for a period of ten days beginning with the day on which either party serves a request on the arbitrator;
 - (c) dies before the dispute is settled; or
 - (d) becomes or deems himself or herself incapable of acting,
- subsection (1) applies again.

(3) The arbitrator must settle by award any matter—

- (a) which is connected with any work to which this Act relates, and
- (b) which is in dispute between the building owner and the adjoining owner.

(4) An award may determine—

- (a) the right to execute any work;
- (b) the time and manner of executing any work; and
- (c) any other matter arising out of or incidental to the dispute including the costs of making the award.

(5) But, unless otherwise agreed between the building owner and the adjoining owner, any period appointed by the award for executing any work does not begin to run until after the end of the period prescribed by this Act for service of the notice in respect of which the dispute arises or is deemed to have arisen.

(6) The reasonable costs incurred in—

- (a) making or obtaining an award under this section,
- (b) reasonable inspections of work to which the award relates, and
- (c) any other matter arising out of the dispute,

are to be paid by such of the parties as the arbitrator determines.

(7) Where the arbitrator makes an award, the arbitrator must serve it forthwith on the parties.

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- (8) The award is conclusive and must not except as provided by this section be questioned in any court.
- (9) Either of the parties to the dispute may appeal to the county court against the award within the period of 14 days beginning with the day on which the award is served on the party making the appeal.
- (10) On such an appeal, the county court may—
 - (a) rescind the award or modify it in such manner as the court thinks fit; and
 - (b) make such order as to costs as the court thinks fit.”
- (3) Where the 1996 Act has effect as mentioned in sub-paragraph (2)—
 - (a) section 7(5) has effect as if the words “(or surveyors acting on their behalf)” were omitted,
 - (b) section 8(5) has effect as if the reference to a surveyor appointed or selected under section 10 were to an arbitrator agreed or appointed under section 10 (as modified by sub-paragraph (2)),
 - (c) section 8(6) has effect as if it provided for the arbitrator to give notice of its intention to enter land or premises, and
 - (d) section 12(3)(b) has effect as if the reference to the surveyor or surveyors were to the arbitrator.
- 8 (1) Where, by virtue of paragraph 6, work to which a notice under section 6(5) of the 1996 Act relates are carried out by an adjoining owner, sections 13 and 14 of that Act have effect subject to the following modifications.
 - (2) Section 13(1) has effect as if it enabled the adjoining owner, within the period of two months beginning with the day of the completion of the work, to serve on the building owner an account in writing showing particulars and expenses of the work.
 - (3) Section 13(2) has effect as if it enabled the building owner to serve on the adjoining owner a notice objecting to the account served under section 13(1) (as modified by sub-paragraph (2)).
 - (4) Section 14 has effect as if—
 - (a) for subsection (1) there were substituted—

“(1) All expenses to be defrayed by a building owner in accordance with an account served under section 13 shall be paid by the building owner.”, and
 - (b) subsection (2) were omitted.