

## SCHEDULES

### SCHEDULE 33

#### PROTECTIVE PROVISIONS

#### PART 3

##### ELECTRONIC COMMUNICATIONS CODE NETWORKS

- 37 (1) Sub-paragraph (2) applies where, by reason of the construction of the authorised works or any subsidence resulting from any of those works—
- (a) damage is caused to any electronic communications apparatus, other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works,
  - (b) damage is caused to property of the operator of an electronic communications code network, or
  - (c) there is any interruption in the supply of the service provided by the operator.
- (2) The nominated undertaker must—
- (a) bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply,
  - (b) make reasonable compensation to the operator for loss sustained by it, and
  - (c) indemnify the operator against all claims, demands, proceedings, or damages which may be made or taken against, or recovered from, the operator, by reason of any such damage or interruption.

But this is subject to sub-paragraphs (3) to (5).

- (3) Sub-paragraph (2) does not apply in connection with any apparatus in respect of which the relations between the nominated undertaker and the operator are regulated by the provisions of Part 3 of the New Roads and Street Works Act 1991.
- (4) Nothing in sub-paragraph (2) is to impose any liability on the nominated undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the operator, its officers, servants, contractors or agents.
- (5) The operator must give the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand is to be made without the consent of the nominated undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- (6) This paragraph applies instead of paragraph 14 of Schedule 2 in relation to the exercise of the powers of paragraphs 2 to 6 of that Schedule.