

SCHEDULES

SCHEDULE 4

MINOR AND CONSEQUENTIAL AMENDMENTS

The Highways Act 1980

- 76 (1) The Highways Act 1980 shall be amended in accordance with the following provisions of this paragraph.
- (2) In section 35 (creation of walkways by agreement)—
- (a) in subsection (1)(c), for the words from "authorities" to "place" there shall be substituted the words "authorities and the operators of telecommunications code systems to place"; and
 - (b) in subsection (12), for the words from "authorities" to "place" there shall be substituted the words "authorities or the operators of telecommunications code systems to place".
- (3) In section 115D (which limits the way in which certain powers may be exercised), at the end there shall be inserted the words “; or
- (d) as to prevent the operator of a telecommunications code system having access to any telecommunication apparatus kept installed for the purposes of that system under, in, on or over the highway.”.
- (4) In section 142(5) (under which licences to plant trees may contain conditions for the protection of the apparatus of statutory undertakers), for the words from "and", in the fourth place where it occurs, onwards there shall be substituted the words "and the operators of telecommunications code systems".
- (5) In subsection (6) of section 144 (powers to erect flagpoles on highways), in the definition of "statutory undertakers", at the end there shall be inserted the words "and the operator of a telecommunications code system".
- (6) In section 156(4) (which authorises works relating to an overhead telegraphic line), for the words "an overhead telegraphic line" there shall be substituted the words "overhead telecommunication apparatus".
- (7) In section 157(9) (meaning of undertakers), for the words from "means" onwards there shall be substituted the words "means persons having powers to break up or open highways in Greater London for the purposes of any sewerage system, any water, gas, electricity, tramway or other undertaking or any telecommunications code system".
- (8) In section 169(4) (which, among other things, defines "statutory undertakers" for the purposes of provisions relating to scaffolding and building materials in highways), at the end there shall be inserted the words "and the operator of a telecommunications code system".

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- (9) In subsection (3) of section 170 (control of mixing of mortar on highways), in the definition of " statutory undertakers ", at the end there shall be inserted the words " and the operator of a telecommunications code system ".
- (10) In section 177 (restriction on construction of buildings over highways)—
- (a) in subsection (4) (no interference with the rights of statutory undertakers), for the words from " statutory undertakers " onwards there shall be substituted the words " statutory undertakers or the operator of a telecommunications code system "; and
 - (b) for subsection (12) (which applies section 7 of the Telegraph Act 1878 to work authorised or required by a licence under section 177) there shall be substituted the following subsection : —
 - “(12) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes of works authorised or required by a licence under this section to be executed, to the licensee.”.
- (11) In section 178(5) (statutory undertakers for the purposes of the licensing of the placing of rails, beams, etc.), for the words from " and ", in the second place where it occurs, onwards there shall be substituted the words " the Post Office and the operator of a telecommunications code system are to be deemed to be statutory undertakers ".
- (12) In section 181 (provisions relating to placing of certain apparatus in highways)—
- (a) in subsection (7) (which relates to licences of the Secretary of State or British Telecommunications), for the words from " licence", in the third place where it occurs, to " required " there shall be substituted the words " licence of the Secretary of State is required ";
 - (b) in subsection (8) (which provides that that section does not apply to the apparatus of statutory undertakers), at the end there shall be inserted the words " or to any apparatus which the operator of a telecommunications code system places, maintains, repairs or reinstates in or under the highway in question in pursuance of a right conferred by or in accordance with the telecommunications code. "; and
 - (c) in subsection (9) (meaning of statutory undertakers), for the words from " include " onwards there shall be substituted the words " except in subsection (8) above, include the operator of a telecommunications code system ".
- (13) In section 329 (interpretation), after subsection (4) there shall be inserted the following subsection:—
- “(4A) Any reference in this Act to apparatus belonging to, or used or maintained by the operator of a telecommunications code system shall have effect as a reference to telecommunication apparatus kept installed for the purposes of that system.”.
- (14) For section 334 (savings for British Telecommunications) there shall be substituted the following section: —
- “**334**(1) Subject to the provisions of this section, nothing in this Act or in any scheme or order made under it affects any rights conferred by or in accordance with the telecommunications code on the operator of a telecommunications code

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system or any duty of any such operator under that code or applies to any telecommunication apparatus kept installed for the purposes of any such system ; but this subsection does not affect the operation of sections 156 to 159 above.

(2) Where

- (a) land is conveyed by a highway authority in pursuance of section 256 above, or
- (b) a highway is stopped up or diverted in pursuance of an order to which this paragraph applies,

and immediately before the conveyance or, as the case may be, at the beginning of the day on which the order comes into force there is under, in, upon, over, along or across the land conveyed or, as the case may be, the highway stopped up or diverted any telecommunication apparatus kept installed for the purposes of a telecommunications code system, then the provisions of subsection (3) below have effect.

Paragraph (b) above applies to the following orders, namely an order made or confirmed by the Minister under section 14 or 18 above, a public path extinguishment order and a public path diversion order.

(3) In the circumstances mentioned in subsection (2) above, the operator of the telecommunications code system has the same power in respect of the telecommunication apparatus as if the conveyance had not been made or, as the case may be, the order had not come into force; but the transferee of the land or, as the case may be, any person entitled to land over which the stopped up or diverted highway subsisted shall be entitled to require the alteration of the apparatus.

(4) Where in pursuance of an order made by a magistrates' court under section 116 above a highway is stopped up or diverted, the following provisions of this subsection have effect in relation to so much of any telecommunication apparatus kept installed for the purposes of a telecommunications code system as is under, in, upon, over, along or across land which by reason of the stopping up or diversion ceases to be a highway (' the affected apparatus ')—

- (a) the power of the operator of the system to remove the affected apparatus is exercisable notwithstanding the making of the order, so however that the said power is not exercisable, as respects the whole or any part of the affected apparatus, after the expiration of a period of 3 months from the date of the sending of the notice referred to in subsection (5) below unless before the expiration of that period the operator of the system has given notice to the authority on whose application the order was made of his intention to remove the affected apparatus or that part of it, as the case may be ;
- (b) the operator of the system may by notice in that behalf to the said authority abandon the affected apparatus or any part of it, and is to be deemed, as respects the affected apparatus or any part of it, to have abandoned it at the expiration of the said period of 3 months unless before the expiration of that period he has removed it or given notice of his intention to remove it;
- (c) the operator of the system is entitled to recover from the said authority the expense of providing, in substitution for the affected

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apparatus and any telecommunication apparatus connected with it which is rendered useless in consequence of the removal or abandonment of the affected apparatus, any telecommunication apparatus in such other place as he may require ;

- (d) where under paragraph (b) above the operator of the system has abandoned the whole or any part of the affected apparatus, it vests in the authority there referred to and shall be deemed, with its abandonment, to cease to be kept installed for the purposes of a telecommunications code system.
- (5) As soon as practicable after the making of an order under section 116 above in circumstances in which subsection (4) above applies in relation to the operator of any telecommunications code system the authority on whose application the order was made shall by notice to the operator inform him of the making of the order.
- (6) Where an order under section 14 or 18 above provides for the alteration of a highway and, immediately before the date on which the order comes into force, there is under, in, upon, over, along or across the highway any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the 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 purposes of authority's works as defined in Part II of the Public Utilities Street Works Act 1950.
- (7) Where in pursuance of an order under section 14 or 18 above a highway is stopped up or diverted, or an order under either of those sections provides for the alteration of a highway, and, immediately before the date on which the order comes into force, there is under, in, upon, over, along or across the highway any telecommunication apparatus kept installed for the purposes of a telecommunications code system then, without prejudice to subsections (2), (3) and (6) above, the provisions of subsection (8) below have effect
- (8) Paragraph 23 of the telecommunications code (which provides a procedure for certain cases where works involve the alteration of telecommunication apparatus) shall apply, for the purposes of the construction or improvement of the trunk road, special road or classified road, as the case may be, to which the order relates and of any works authorised by the order, to the Minister or other highway authority by whom the order in question was made.
- (9) Without prejudice to the code in Part II of the Public Utilities Street Works Act 1950 (relations between an authority carrying out road alterations and undertakers whose apparatus is thereby affected) the said paragraph 23 shall apply for the purposes of—
- (a) any work authorised or required by an order under section 93 above to be done by a highway authority or the owners of a bridge,
 - (b) any work which a highway authority is authorised to carry out under section 96 above, and
 - (c) any work authorised or required by a licence under section 176 above to be done by the person to whom the licence is granted,
- to the authority or person authorised or required to carry out the work.

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(10) Where, in pursuance of any order or scheme made or confirmed under this Act, a navigable watercourse is diverted and, immediately before the date on which the order or scheme comes into force, there is under, in, upon, over, along or across the watercourse, or any towing path or other way adjacent to it any telecommunication apparatus kept installed for the purposes of a telecommunications code system, the operator of that system has the same powers in respect of that apparatus as if the order or scheme had not come into force ; but—

- (a) the highway authority by whom the order or scheme was made, or
- (b) any person entitled to land on which so much of the watercourse, towing path or way as is diverted in pursuance of the order or scheme was previously situated,

shall be entitled to require the alteration of the apparatus.

(11) Sub-paragraph (8) of paragraph 23 of the telecommunications code (offence) shall be deemed to be omitted for the purposes of the application by this section of that paragraph to the Minister.

(12) 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.

(13) 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.”.

(15) In relation—

- (a) to a conveyance before the appointed day made in pursuance of section 256 of the Highways Act 1980, and
- (b) to an order coming into force before the appointed day to which subsection (2)(6), (4), (6), (7) or (10) of section 334 of that Act applies immediately before that day,

the said section 334 shall have effect, notwithstanding any repeal made by this Act, as it has effect immediately before the coming into force of sub-paragraph (14) above.