

Status: Point in time view as at 08/09/2000.

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SCHEDULES

SCHEDULE 4

Section 10(1).

OTHER POWERS ETC. OF LICENCE HOLDERS

Street works etc. in England and Wales

- 1 (1) Subject to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—
- (a) the following kinds of works, that is to say, installing under, over, in, on, along or across any street and from time to time inspecting, maintaining, adjusting, repairing, altering, replacing or removing—
 - (i) any electric lines or electrical plant; and
 - (ii) any structures for housing or covering any such lines or plant; and
 - (b) any works requisite for or incidental to the purposes of any works falling within paragraph (a) above, including for those purposes—
 - (i) opening or breaking up any street or any sewers, drains or tunnels within or under any street;
 - (ii) tunnelling or boring under any street; and
 - (iii) removing or using all earth and materials in or under any street;but nothing in this sub-paragraph shall empower a licence holder to lay down or place any electric line or electrical plant into, through or against any building, or in any land not dedicated to the public use.
- (2) The power of a licence holder under sub-paragraph (1) to place on or over a street any structure for housing any line or plant shall be [^{F1}exercisable only with the consent of the street authority; but such consent shall not be unreasonably withheld].
- (3) Any question under sub-paragraph (2) above as to whether or not a consent is unreasonably withheld shall be determined by a single arbitrator to be appointed by the parties or, in default of agreement, by the Director.
- (4) Except in cases of emergency arising from faults in any electric lines or electrical plant, [^{F2}a street which is not a maintainable highway] shall not be opened or broken up by virtue of sub-paragraph (1) above except with the consent of [^{F3}the street authority] or the consent of the Secretary of State.
- (5) The Secretary of State shall not entertain an application for his consent under sub-paragraph (4) above unless the licence holder has served notice of the application on the person whose consent would otherwise be required.
- (6) A licence holder shall do as little damage as possible in the exercise of the powers conferred by sub-paragraph (1) above and shall make compensation for any damage done in the exercise of those powers.

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- (7) A licence holder shall exercise the powers conferred by sub-paragraph (1) above in such manner as will secure that nothing which he installs or keeps installed under, over, in, on, along or across any street becomes a source of danger to the public.
- [^{F4}(8) Nothing in sub-paragraph (1) above shall affect the application to any operation of sections 34 to 36 of the Coast Protection Act 1949.]
- [^{F5}(9) In this paragraph “maintainable highway”, “street” and “street authority” have the same meaning as in Part III of the New Roads and Street Works Act 1991.]
- (10) This paragraph extends to England and Wales only.

Textual Amendments

- F1** Words in Sch. 4 para. 1(2) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(2)**; S.I. 1992/2984, art. 2(2), **Sch. 2**.
- F2** Words in Sch. 4 para. 1(4) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(3)(a)**; S.I. 1992/2984, art. 2(2), **Sch. 2**.
- F3** Words in Sch. 4 para. 1(4) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(3)(b)**; S.I. 1992/2984, art. 2(2), **Sch. 2**.
- F4** Sch. 4 para. 1(8) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(4)**; S.I. 1992/2984, art. 2(2), **Sch. 2**.
- F5** Sch. 4 para. 1(9) substituted (1.1.1993) by New Roads and Street Works Act 1991 (c. 22, SIF 59, 108), s. 168(1), **Sch. 8 Pt. IV para. 123(5)**; S.I. 1992/2984, art. 2(2), **Sch. 2**.

Road works etc. in Scotland

- 2 (1) Subject to the following provisions of this paragraph, for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, a licence holder may execute—
- (a) the following kinds of works, that is to say, installing under, over, in, on, along or across any road or bridge and from time to time inspecting, maintaining, adjusting, repairing, altering or removing—
- (i) any electric lines or electrical plant; and
- (ii) any structures for housing or covering any such lines or plant; and
- (b) any works requisite for or incidental to the purposes of any works falling within paragraph (a) above, including for those purposes—
- (i) opening or breaking up any road or bridge or any sewers, drains or tunnels within or under any road or bridge;
- (ii) tunnelling or boring under any road; and
- (iii) removing or using all earth and materials in or under any road;
- but nothing in this sub-paragraph shall empower a licence holder to lay down or place any electric line or electrical plant into, through or against any building, or in any land over which there is no public right of passage.
- (2) The power of a licence holder under sub-paragraph (1) above to place on or over a road or bridge any structure for housing any line or plant shall be [^{F6}exercisable only with the consent of the road works authority; but such consent shall not be unreasonably withheld] .

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- (3) Any question under sub-paragraph (2) above as to whether or not a consent is unreasonably withheld shall be determined by a single arbiter to be appointed by the parties or, in default of agreement, by the Director.
- (4) Except in cases of emergency arising from faults in any electric lines or electrical plant, [^{F7}a road which is not a public road] shall not be opened or broken up by virtue of sub-paragraph (1) above except with the consent of [^{F8}the road works authority] or the consent of the Secretary of State.
- (5) The Secretary of State shall not entertain an application for his consent under sub-paragraph (4) above unless the licence holder has served notice of the application in the prescribed form on the person whose consent would otherwise be required.
- (6) A licence holder shall do as little damage as possible in the exercise of the powers conferred by sub-paragraph (1) above and shall make compensation for any damage done in the exercise of those powers.
- (7) A licence holder shall exercise the powers conferred by sub-paragraph (1) above in such manner as will secure that nothing which he installs or keeps installed under, over, in, on, along or across any road or bridge becomes a source of danger to the public.
- [^{F9}(8) Nothing in sub-paragraph (1) above shall affect the application to any operation of sections 34 to 36 of the Coast Protection Act 1949.]
- [^{F10}(9) In this paragraph “public road”, “road” and “road works authority” have the same meaning as in Part IV of the New Roads and Street Works Act 1991.]
- (10) This paragraph extends to Scotland only.

Textual Amendments

- F6** Words in Sch. 4 para. 2(2) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 Pt. IV para. 124\(2\)](#); S.I. 1992/2990, art. 2(2), [Sch.2](#).
- F7** Words in Sch. 4 para. 2(4) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), Sch. 8 Pt. IV para. 124(3)(a); S.I. 1992/2990, [art. 2\(2\)](#), Sch. 2.
- F8** Words in Sch. 4 para. 2(4) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), Sch. 8 Pt. IV para. 124(3)(b); S.I. 1992/2990, art. 2(2), [Sch.2](#).
- F9** Sch. 4 para 2(8) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 Pt. IV para. 124\(4\)](#); S.I.1992/2990, art. 2(2), [Sch.2](#).
- F10** Sch. 4 para 2(9) substituted (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168(1), [Sch. 8 Pt. IV para. 124\(5\)](#); S.I. 1992/2990, art. 2(2), [Sch.2](#).

Alteration of works

- 3 (1) A licence holder may execute works in pursuance of paragraph 1 or 2 above, notwithstanding that they involve a temporary or permanent alteration of any of the following, namely—
 - (a) any electric line or electrical plant under the control of another licence holder;
 - (b) any gas pipe [^{F11}operated by a public gas transporter];
 - (c) any relevant pipe (within the meaning of [^{F12}section 159 of the Water Resources Act 1991 or section 158 of the Water Industry Act 1991 which

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- (whether or not it is in a street) is]) under the control of the National Rivers Authority, a water undertaker or a sewerage undertaker or, in Scotland, any water pipe under the control of a person supplying water in the exercise of statutory powers;
- (d) any telecommunication apparatus used for the purposes of a telecommunication system which is operated by a person to whom the telecommunications code applies; or
- (e) any system apparatus (within the meaning of Part II of the ^{M1}Road Traffic (Driver Licensing and Information Systems) Act 1989) of an operator of a driver information system who is licensed under Part II of that Act.
- (2) Where a licence holder is proposing to execute works in pursuance of paragraph 1 or 2 above which involve or are likely to involve any such alteration as is mentioned in sub-paragraph (1)(a), (b) or (c) above, the following provisions of this paragraph shall apply; and in those provisions “the relevant undertaker” means the other licence holder, the [^{F13}public gas transporter] or the person supplying water in the exercise of statutory powers, as the case may be.
- (3) The licence holder shall, not less than one month before the works are commenced, give the relevant undertaker a notice specifying the nature of the licence holder’s works, the alteration or likely alteration involved and the time and place at which the works will be commenced.
- (4) Sub-paragraph (3) above shall not apply in relation to any emergency works of which the licence holder gives the relevant undertaker notice as soon as practicable after commencing the works.
- (5) Where a notice has been given under sub-paragraph (3) above by the licence holder to the relevant undertaker, the undertaker may within the period of seven days beginning with the giving of the notice give the licence holder a counter-notice which may state either—
- (a) that the undertaker intends himself to make any alteration made necessary or expedient by the licence holder’s proposed works; or
- (b) that he requires the licence holder in making any such alteration to do so under the supervision and to the satisfaction of the undertaker.
- (6) Where a counter-notice given under sub-paragraph (5) above states that the relevant undertaker intends himself to make any alteration—
- (a) the undertaker shall (subject to sub-paragraph (8) below) have the right, instead of the licence holder, to execute any works for the purpose of making that alteration; and
- (b) any expenses incurred by the undertaker in or in connection with the execution of those works and the amount of any loss or damage sustained by the undertaker in consequence of the alteration shall be recoverable by the undertaker from the licence holder in any court of competent jurisdiction.
- (7) Where a counter-notice given under sub-paragraph (5) above states that any alteration is to be made under the supervision and to the satisfaction of the relevant undertaker—
- (a) the licence holder shall not make the alteration except as required by the notice or under sub-paragraph (8) below; and
- (b) any expenses incurred by the undertaker in or in connection with the provision of that supervision and the amount of any loss or damage sustained

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by the undertaker in consequence of the alteration shall be recoverable by the undertaker from the licence holder in any court of competent jurisdiction.

(8) Where—

- (a) no counter-notice is given under sub-paragraph (5) above; or
- (b) the relevant undertaker, having given a counter-notice falling within that sub-paragraph, fails to make any alteration made necessary or expedient by the licence holder's proposed works within such period (being not less than 48 hours) as the licence holder may by notice specify or, as the case may be, unreasonably fails to provide the required supervision,

the licence holder may himself execute works for the purpose of making the alteration or, as the case may be, may execute such works without the supervision of the undertaker; but in either case the licence holder shall execute the works to the satisfaction of the undertaker.

(9) If the licence holder or any of his agents—

- (a) executes any works without the notice required by sub-paragraph (3) above having been given; or
- (b) unreasonably fails to comply with any reasonable requirement of the relevant undertaker under this paragraph,

he shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.

4 (1) Any of the following who is authorised by or under any enactment to execute works corresponding to those authorised by paragraph 1 or 2 above, namely—

- (a) any [^{F14}public gas transporter];
- (b) the [^{F15}Environment Agency], any water undertaker or any sewerage undertaker or, in Scotland, any person supplying water in the exercise of statutory powers;
- (c) any public telecommunications operator; and
- (d) any operator of a driver information system who is licensed under Part II of the ^{M2}Road Traffic (Driver Licensing and Information Systems) Act 1989,

(in this paragraph referred to as a “relevant undertaker”) may execute such works, notwithstanding that they involve a temporary or permanent alteration of any electric line or electrical plant under the control of a licence holder.

(2) Where a relevant undertaker is proposing to execute any such works as are mentioned in sub-paragraph (1) above which involve or are likely to involve any such alteration as is there mentioned, sub-paragraphs (3) to (9) of paragraph 3 above shall apply as if—

- (a) any reference to the licence holder were a reference to the relevant undertaker; and
- (b) any reference to the relevant undertaker were a reference to the licence holder.

Textual Amendments

F14 Words in Sch. 4 para. 4(1)(a) substituted (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 17(2)**; S.I. 1996/218, **art. 2**

F15 Words in Sch. 4 para. 4(1)(b) substituted (1.4.1996) by 1995 c. 25, s. 120(1), **Sch. 22 para. 40** (with ss. 7(6), 115, 117); S.I. 1996/186, **art. 3**

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Marginal Citations

M2 1989 c. 22.

Protection from interference

- 5 (1) Subject to sub-paragraph (2) below, a licence holder who installs or alters, or changes the mode of operation of, any electric line or electrical plant shall take all reasonable precautions for securing that the operation of that line or plant does not interfere with the operation of any telecommunication apparatus which—
- (a) is under the control of a person to whom the telecommunications code applies; and
 - (b) is not unusually sensitive to interference with its operation.
- (2) In the case of any telecommunication apparatus which is subsequently installed or altered or whose mode of operation is subsequently changed, the duty imposed by sub-paragraph (1) above shall not apply in relation to—
- (a) any momentary interference with its operation; or
 - (b) where it is installed in unreasonably close proximity to the electric line or electrical plant, any other interference with its operation.
- (3) Sub-paragraphs (1) and (2) above shall be read as also applying in the converse case of a person to whom the telecommunications code applies who installs or alters, or changes the mode of operation of, any telecommunication apparatus, and in such a case shall have effect as if—
- (a) any reference to the licence holder were a reference to that person;
 - (b) any reference to an electric line or electrical plant were a reference to such apparatus; and
 - (c) any reference to such apparatus under the control of a person to whom that code applies were a reference to such a line or such plant under the control of a licence holder.
- (4) Any difference arising under this paragraph between a licence holder and a person to whom the telecommunications code applies shall be referred to arbitration by an arbitrator or, in Scotland, arbiter appointed, in default of agreement between the parties, by the President of the Chartered Institute of Arbitrators.
- (5) In this paragraph “momentary interference” means any interference of momentary duration which is not a regular occurrence (whether caused by physical contact or otherwise).

Acquisition of wayleaves

- 6 (1) This paragraph applies where—
- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to instal and keep installed an electric line on, under or over any land; and
 - (b) the owner or occupier of the land, having been given a notice requiring him to give the necessary wayleave within a period (not being less than 21 days) specified in the notice—
 - (i) has failed to give the wayleave before the end of that period; or

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(ii) has given the wayleave subject to terms and conditions to which the licence holder objects;

and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to instal and keep installed the electric line on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line.

(2) This paragraph also applies where—

- (a) for any purpose connected with the carrying on of the activities which he is authorised by his licence to carry on, it is necessary or expedient for a licence holder to keep an electric line installed on, under or over any land; and
- (b) the owner or occupier of the land has given notice to the licence holder under paragraph 8(2) below requiring him to remove the electric line;

and in this paragraph as it so applies “the necessary wayleave” means consent for the licence holder to keep the electric line installed on, under or over the land and to have access to the land for the purpose of inspecting, maintaining, adjusting, repairing, altering, replacing or removing the electric line.

- (3) Subject to sub-paragraphs (4) and (5) below, the Secretary of State may, on the application of the licence holder, himself grant the necessary wayleave subject to such terms and conditions as he thinks fit; and a necessary wayleave so granted shall, unless previously terminated in accordance with a term contained in the wayleave, continue in force for such period as may be specified in the wayleave.
- (4) The Secretary of State shall not entertain an application under sub-paragraph (3) above in any case where—
 - (a) the land is covered by a dwelling, or will be so covered on the assumption that any planning permission which is in force is acted on; and
 - (b) the line is to be installed on or over the land.
- (5) Before granting the necessary wayleave, the Secretary of State shall afford—
 - (a) the occupier of the land; and
 - (b) where the occupier is not also the owner of the land, the owner,an opportunity of being heard by a person appointed by the Secretary of State.
- (6) A necessary wayleave granted under this paragraph—
 - (a) shall not be subject to the provisions of any enactment requiring the registration of interests in, charges over or other obligations affecting land; but
 - (b) shall bind any person who is at any time the owner or occupier of the land.
- (7) Where in pursuance of a necessary wayleave granted under this paragraph a licence holder has erected on any land supports for an electric line, he shall be deemed to have an interest in that land for the purposes of section 7 of the ^{M3}Mines (Working Facilities and Support) Act 1966.
- (8) In this paragraph “dwelling” means a building or part of a building occupied, or (if not occupied) last occupied or intended to be occupied, as a private dwelling or, in relation to Scotland, a private house, and includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with that building or part.

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Modifications etc. (not altering text)

C1 Sch. 4 para. 6: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

Marginal Citations

M3 1966 c. 4.

Provisions supplementary to paragraph 6

- 7 (1) Where a wayleave is granted to a licence holder under paragraph 6 above—
- (a) the occupier of the land; and
 - (b) where the occupier is not also the owner of the land, the owner,
- may recover from the licence holder compensation in respect of the grant.
- (2) Where in the exercise of any right conferred by such a wayleave any damage is caused to land or to moveables, any person interested in the land or moveables may recover from the licence holder compensation in respect of that damage; and where in consequence of the exercise of such a right a person is disturbed in his enjoyment of any land or moveables he may recover from the licence holder compensation in respect of that disturbance.
- (3) Compensation under this paragraph may be recovered as a lump sum or by periodical payments or partly in one way and partly in the other.
- (4) Any question of disputed compensation under this paragraph shall be determined by the Tribunal; and sections 2 and 4 of the ^{M4}Land Compensation Act 1961 or sections 9 and 11 of the ^{M5}Land Compensation (Scotland) Act 1963 shall apply to any such determination.

Marginal Citations

M4 1961 c. 33.

M5 1963 c. 51.

Temporary continuation of wayleaves

- 8 (1) This paragraph applies where at any time such a wayleave as is mentioned in paragraph 6 above (whether granted under that paragraph or by agreement between the parties)—
- (a) is determined by the expiration of a period specified in the wayleave;
 - (b) is terminated by the owner or occupier of the land in accordance with a term contained in the wayleave; or
 - (c) by reason of a change in the ownership or occupation of the land after the granting of the wayleave, ceases to be binding on the owner or occupier of the land.
- (2) The owner or occupier of the land may—
- (a) in a case falling within paragraph (a) of sub-paragraph (1) above, at any time after or within three months before the end of the period specified in the wayleave;

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- (b) in a case falling within paragraph (b) of that sub-paragraph, at any time after the wayleave has been terminated by him; or
- (c) in a case falling within paragraph (c) of that sub-paragraph, at any time after becoming the owner or occupier of the land by virtue of such a change in the ownership or occupation of the land as is mentioned in that paragraph,

give to the licence holder a notice requiring him to remove the electric line from the land; but the licence holder shall not be obliged to comply with such a notice except in the circumstances and to the extent provided by the following provisions of this paragraph.

- (3) Where within the period of three months beginning with the date of the notice under sub-paragraph (2) above the licence holder makes neither—

- (a) an application for the grant of the necessary wayleave under paragraph 6 above; nor
- (b) an order authorising the compulsory purchase of the land made by virtue of paragraph 1 of Schedule 3 to this Act,

the licence holder shall comply with the notice at the end of that period.

- (4) Where—

- (a) within the period mentioned in sub-paragraph (3) above the licence holder makes an application for the grant of the necessary wayleave under paragraph 6 above; and
- (b) that application is refused by the Secretary of State,

the licence holder shall comply with the notice under sub-paragraph (2) above at the end of the period of one month beginning with the date of the Secretary of State's decision or such longer period as the Secretary of State may specify.

- (5) Where—

- (a) within the period mentioned in sub-paragraph (3) above the licence holder makes an order by virtue of paragraph 1 of Schedule 3 to this Act authorising the compulsory purchase of the land; and
- (b) that order is not confirmed by the Secretary of State,

the licence holder shall comply with the notice under sub-paragraph (2) above at the end of the period of one month beginning with the date of the Secretary of State's decision or such longer period as the Secretary of State may specify.

Modifications etc. (not altering text)

C2 Sch. 4 para. 8: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

Felling and lopping of trees etc.

- 9 (1) This paragraph applies where any tree is or will be in such close proximity to an electric line or electrical plant which is kept installed or is being or is to be installed by a licence holder as—

- (a) to obstruct or interfere with the installation, maintenance or working of the line or plant; or
- (b) to constitute an unacceptable source of danger (whether to children or to other persons);

and in this paragraph “the land” means the land on which the tree is growing.

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- (2) The licence holder may give notice to the occupier of the land requiring him to fell or lop the tree or cut back its roots so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b) above, subject to the payment to him by the licence holder of the expenses reasonably incurred by him in complying with the notice.
- (3) Where the occupier is not also the owner of the land, a copy of any notice under sub-paragraph (2) above shall also be served on the owner.
- (4) If within 21 days from the giving of a notice under sub-paragraph (2) above—
- (a) the requirements of the notice are not complied with; and
 - (b) neither the owner nor occupier of the land gives a counter notice under sub-paragraph (5) below,
- the licence holder may cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1)(a) or (b) above.
- (5) If, within 21 days from the giving of a notice under sub-paragraph (2) above, the owner or occupier of the land gives a counter notice to the licence holder objecting to the requirements of the notice, the matter shall, unless the counter notice is withdrawn, be referred to the Secretary of State.
- (6) On a reference under sub-paragraph (5) above, the Secretary of State, after giving the parties an opportunity of being heard by a person appointed by him, may make such order as he thinks just, and any such order—
- (a) may empower the licence holder (after giving such notice to any person by whom a counter notice was given of the commencement of the work as the order may direct) to cause the tree to be felled or lopped or its roots to be cut back so as to prevent it from having the effect mentioned in sub-paragraph (1) (a) or (b) above; and
 - (b) may determine any question as to what expenses (if any) are to be paid.
- (7) Where the licence holder exercises any powers conferred under sub-paragraph (4) or (6) above, he shall—
- (a) cause trees to be felled or lopped or their roots to be cut back in accordance with good arboricultural practice and so as to do as little damage as possible to trees, fences, hedges and growing crops;
 - (b) cause felled trees, lopped boughs or root cuttings to be removed in accordance with the directions of the owner or occupier; and
 - (c) make good any damage done to the land.
- (8) In this paragraph “tree” includes any shrub and references to felling or lopping, felled trees or lopped boughs shall be construed accordingly.

Modifications etc. (not altering text)

C3 Sch. 4 para. 9: transfer of certain functions (S.) (1.7.1999) by S.I. 1999/1750, arts. 1, 2, Sch. 1 (with art. 7)

Entry on land for purposes of exploration

- 10 (1) Subject to the following provisions of this paragraph and without prejudice to any other right of entry, a person authorised in writing by a licence holder may, at any reasonable time, enter upon and survey any land for the purpose of ascertaining

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whether the land would be suitable for use for any purpose connected with the carrying on of the activities which the licence holder is authorised by his licence to carry on.

- (2) A person authorised to enter upon any land under this section shall not demand to do so as of right unless—
 - (a) 14 days notice of the intended entry has been given to the occupier; and
 - (b) if required to do so, he has produced evidence of his authority.
- (3) The powers conferred by this paragraph shall not be exercisable in relation to land which is covered by a building or will be so covered on the assumption that any planning permission which is in force is acted on.
- (4) The power to survey land conferred by this paragraph includes power to search and bore for the purpose of ascertaining the nature of the subsoil; but works may not be carried out on the land for this purpose unless—
 - (a) notice of the proposed works is included in the notice given under sub-paragraph (2) above; and
 - (b) where land is held by statutory undertakers who object to the works on the ground that the carrying out of the works would be seriously detrimental to the carrying on of their undertaking, the Secretary of State gives his consent.
- (5) Where any person exercises any powers conferred by this paragraph, the licence holder by whom he was authorised shall make good any damage done to the land.
- (6) In this paragraph “building” includes any garden, yard, outhouses and appurtenances belonging to or usually enjoyed with a building.

Modifications etc. (not altering text)

- C4 [Sch. 4 para. 10\(4\)\(b\)](#): transfer of certain functions (S.) (1.7.1999) by [S.I. 1999/1750](#), [arts. 1, 2](#), [Sch. 1](#) (with [art. 7](#))

Provisions supplementary to paragraphs 9 and 10

- 11
- (1) Any person who intentionally obstructs a person acting in the exercise of any power conferred by or under paragraph 9 or 10 above shall be liable on summary conviction to a fine not exceeding level 3 on the standard scale.
 - (2) Where in the exercise of any power conferred by or under paragraph 9 or 10 above any damage is caused to land or to moveables, any person interested in the land or moveables may recover compensation in respect of that damage from the licence holder on whose behalf the power is exercised; and where in consequence of the exercise of such a power a person is disturbed in his enjoyment of any land or moveables he may recover from that licence holder compensation in respect of that disturbance.
 - (3) Any question of disputed compensation under sub-paragraph (2) above shall be referred to and determined by the Tribunal; and sections 2 and 4 of the ^{M6}Land Compensation Act 1961 or sections 9 and 11 of the ^{M7}Land Compensation (Scotland) Act 1963 shall apply to any such determination.

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Marginal Citations

- M6** 1961 c. 33.
M7 1963 c. 51.

Interpretation

12 In this Schedule—

“moveables” means chattels in relation to England and Wales and corporeal moveables in relation to Scotland;

^{F16}
...

“the Planning Act” means [^{F17}the Town and Country Planning Act 1990]or [^{F18}the Town and Country Planning (Scotland) Act 1997];

“planning permission” means a planning permission granted under Part III of the Planning Act;

“^{F19}public gas transporter]” has the same meaning as in Part I of the ^{M8}Gas Act 1986;

“public telecommunications operator” has the same meanings as in the ^{M9}Telecommunications Act 1984;

^{F20}
...

“statutory undertakers” has the same meaning as in the Planning Act;

“telecommunication apparatus” and “telecommunication system” have the same meanings as in the Telecommunications Act 1984 and “the telecommunications code” means the code contained in Schedule 2 to that Act;

“the Tribunal” means the Lands Tribunal in relation to England and Wales and the Lands Tribunal for Scotland in relation to Scotland.

Textual Amendments

- F16** Sch. 4 para. 12 definition of "navigation authority" repealed (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168, Sch. 8 Pt. IV para. 125, [Sch. 9](#); (E.W.) S.I. 1992/2984, art. 2(2), [Sch. 2](#) and (S.) S.I. 1992/2990, art. 2(2), [Sch. 2](#).
- F17** Words substituted by [Planning \(Consequential Provisions\) Act 1990 \(c. 11, SIF 123:1, 2\)](#), s. 4, [Sch. 2 para. 83\(1\)](#)
- F18** Words in Sch. 4 para. 12 substituted (27.5.1997) by [1997 c. 11, ss. 4, 6\(2\)](#), [Sch. 2 para. 44\(2\)](#)
- F19** Words in Sch. 4 para. 12 substituted (1.3.1996) by [1995 c. 45, s. 16\(1\)](#), [Sch. 4 para. 17\(3\)](#); S.I. 1996/218, [art. 2](#)
- F20** Sch. 4 para. 12 definition of "railway authority" repealed (1.1.1993) by [New Roads and Street Works Act 1991 \(c. 22, SIF 59, 108\)](#), s. 168, Sch. 8 Pt. IV para. 125, [Sch. 9](#); (E.W.) S.I. 1992/2984, art. 2(2), [Sch. 2](#) and (S.) S.I. 1992/2990, art. 2(2), [Sch. 2](#).

Marginal Citations

- M8** 1986 c. 44.
M9 1984 c. 12.

Status:

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