



Number 4 of 2018

Telecommunications Services (Ducting and Cables) Act 2018



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TELECOMMUNICATIONS SERVICES (DUCTING AND CABLES) ACT 2018

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TELECOMMUNICATIONS SERVICES (DUCTING AND CABLES) ACT 2018

An Act to provide for the vesting in the Minister for Communications, Climate Action and Environment of ownership of certain ducting and cables; to provide for the vesting in that Minister of certain legal interests relating to ducting and cables for the purposes of the performance of any of his or her functions for telecommunications purposes; to provide for compensation; to provide for certain obligations; and to provide for related matters. [4th April, 2018]

Be it enacted by the Oireachtas as follows:

Definitions

1. (1) In this Act—

“Department” means Department of Communications, Climate Action and Environment;

“deposited map” has the meaning given to it by *section 8*;

“ducting and cables” means any ducting and cables for the housing of any wires, cables (including fibre-optic cables), laser optical fibres, electronic data or impulse transmission communication or reception systems, all other conducting media or any other materials connected with or facilitating the performance by the Minister of any of his or her functions for telecommunications purposes and includes—

- (a) part of any such ducting and cables, or
- (b) any apparatus, equipment or other thing (or part thereof) which is ancillary to such ducting and cables or any of them whether moveable or permanent or which assists in the inspection, placement, maintenance, repair, replacement, rendering unusable or servicing of such ducting and cables or any of them,

and references to “ducting” and “cables” shall be construed accordingly;

“emergency” means any event or circumstance or combination of events or circumstances that is occurring, has occurred or may occur which adversely affects or may adversely affect the safety or operational integrity of the ducting and cables;

“GNI” means Gas Networks Ireland being a designated activity company (within the meaning of the Companies Act 2014) incorporated in the State (registered number 555744) and having its registered office at Gasworks Road, Cork;

“legal interest” has the meaning given to it by section 11(4) of the Land and Conveyancing Law Reform Act 2009;

“Mayo-Galway pipeline” means the transmission pipeline beginning at Bellanaboy Bridge Gas Terminal, County Mayo and terminating at Ballymoneen Above Ground Installation, County Galway;

“Minister” means the Minister for Communications, Climate Action and Environment;

“owner” means the owner of any estate, right or interest in or over land that consists of any part of the route;

“relevant deed” means any deed of easement in respect of land that consists of any part of the route and that relates to ducting and cables or to ducting and cables and the Mayo-Galway pipeline, as the case may be, made between an owner (or any of his or her predecessors in title) and GNI (or any of its predecessors in title) before the vesting day;

“route” means the continuous strip of land which is more particularly delineated on the deposited map and coloured red thereon;

“transmission pipeline” has the meaning given to it by section 2 of the Gas (Interim) (Regulation) Act 2002;

“vesting day” means the day appointed by order under *section 3(1)* to be the vesting day.

Vesting of ownership of ducting and cables in Minister

2. All the right, title or interest of any person to or in the ducting and cables laid on, over or beneath the surface of land that consists of any part of the route shall, on the coming into operation of this section, stand vested in the Minister.

Vesting of certain legal interests in Minister

3. (1) The Minister may by order appoint a day (in this Act referred to as the “vesting day”) for the purposes of this section.
 - (2) Subject to *subsection (4)*, on the vesting day the legal interests referred to in *Schedule 1* that, immediately before the vesting day, were vested in GNI (or any of its predecessors in title) pursuant to the relevant deeds shall, subject to the obligations in *Schedule 3*, without any transfer, conveyance or assignment, stand vested in the Minister for the purposes of the performance by the Minister of any of his or her functions for telecommunications purposes.
 - (3) Save as provided for by *subsection (2)* and subject to *subsection (4)*, on the vesting day the legal interests referred to in *Schedule 2* shall, subject to the obligations in *Schedule 3*, without any transfer, conveyance or assignment, stand vested in the Minister for the purposes of the performance by the Minister of any of his or her functions for telecommunications purposes.

- (4) *Subsection (2)* is without prejudice to any other legal interests vested in GNI (or any of its predecessors in title) pursuant to the relevant deeds before the vesting day and which are not vested in the Minister under *subsection (2)*.
- (5) Without prejudice to the operation of the relevant deeds before the vesting day, insofar as those deeds provide for certain covenants specified therein that are binding on GNI (or any of its predecessors in title), GNI, on and after the vesting day, shall not be bound by those covenants in so far as they relate to the legal interests vested in the Minister under *subsection (2)*.

Compensation for diminution in value of land

4. (1) A person who was an owner immediately before the vesting day may apply to the Minister for compensation in respect of any diminution in the value of land consequent on the vesting in the Minister of any legal interest under *section 3* and the owner shall, subject to the provisions of this section, be entitled to be paid such compensation together with interest by virtue of *subsection (3)*.
- (2) Subject to *subsection (4)*, the amount of compensation payable under *subsection (1)* shall, having regard to the valuation applied by GNI (or any of its predecessors in title) for the purposes of the relevant deeds, be determined by reference to the difference between the antecedent and subsequent values of the land concerned consequent on the vesting in the Minister of any legal interest under *section 3*, where—
 - (a) the antecedent value of the land is the amount which the land if sold in the open market by a willing seller immediately before the vesting day might have been expected to realise, and
 - (b) the subsequent value of the land is the amount which the land if sold in the open market by a willing seller immediately after the vesting day might be expected to realise.
- (3) (a) Subject to *paragraph (b)*, where compensation is payable under *subsection (1)*, there shall be paid interest on the amount of the compensation so payable at such rate as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine from time to time for the purpose of this section, from the vesting day until the payment of such compensation.
- (b) There shall be no interest paid on compensation where—
 - (i) the Minister makes an unconditional offer in writing of any sum as compensation to the owner concerned,
 - (ii) such offer is not accepted by the owner to whom it is made, and
 - (iii) the sum awarded as compensation by the official arbitrator does not exceed the sum so offered.
- (4) Any amounts paid to an owner (or to any of his or her predecessors in title) in consideration of the granting by the owner to GNI (or to any of its predecessors in

title) of access to any part of the route, and of any ancillary rights relating thereto, in respect of ducting and cables, shall be taken into account in assessing any amount of compensation payable under *subsection (1)*.

- (5) (a) Subject to *paragraph (b)*, a claim for compensation under *subsection (1)* shall be made not later than 3 years from the vesting day.
(b) The High Court may, where it considers that the interests of justice so require, extend the period within which a claim for compensation under *subsection (1)* may be brought upon application being made to it in that behalf.
- (6) Subject to *subsection (5)*, compensation under this section may be paid to the personal representatives of a person entitled to it.
- (7) A claim for compensation under *subsection (1)* shall, in default of agreement, be determined by arbitration under and in accordance with the Acquisition of Land (Assessment of Compensation) Act 1919 and sections 69 to 83 of the Lands Clauses Consolidation Act 1845, in all respects as if the claim arose in relation to compulsory acquisition of land (but subject to the proviso that the arbitrator shall have jurisdiction to make a nil award) and for the purposes of those Acts the Minister shall be deemed to be the promoter of the undertaking.
- (8) In this section “official arbitrator” means an official arbitrator under the Acquisition of Land (Assessment of Compensation) Act 1919.

Compensation for loss, etc., and regulations

5. (1) In this section “functions to which this section applies” means all or any of the functions conferred on the Minister by this Act.
- (2) The Minister shall, in accordance with a scheme or schemes of compensation made for the purposes of this section—
 - (a) make good any loss or damage caused to an owner as a consequence of the performance by the Minister of the functions to which this section applies, or reimburse the owner the reasonable costs and expenses of such making good, and
 - (b) as appropriate, pay to an owner reasonable compensation for any loss, damage, disturbance or injury, caused to the owner as a consequence of the performance by the Minister of the functions to which this section applies, together with interest payable on the amount of such compensation at such rate as the Minister, with the consent of the Minister for Public Expenditure and Reform, may determine from time to time for the purposes of this section, from the date on which the claim is made to the date of payment thereof.
- (3) The Minister shall, with the consent of the Minister for Public Expenditure and Reform, make a scheme or schemes of compensation providing for the payment of compensation referred to in *subsection (2)* including but not limited to provision for the following:
 - (a) the matters or classes of matters in respect of which the scheme shall apply;

- (b) the form and manner in which a claim for compensation may be made;
 - (c) the provision by the claimant of evidence and other information in support of his or her claim and the verification of such evidence and information.
- (4) The Minister may amend or revoke and replace by a subsequent scheme or schemes a scheme or schemes of compensation made under *subsection (3)*.
- (5) The Minister shall lay before each House of the Oireachtas a scheme of compensation made under *subsection (3)*, including an amendment to a scheme made under *subsection (4)*, as soon as practicable after it has been made.
- (6) The Minister shall—
- (a) publish on the Department’s website and in such other manner as the Minister considers appropriate, and
 - (b) make available on request copies of,
- the scheme or schemes of compensation made under *subsection (3)* or any amendment to such a scheme or schemes of compensation made under *subsection (4)*.
- (7) (a) Any dispute or claim arising out of or in connection with a claim for compensation under this section shall be referred, by notice in writing from either party, to the decision of a single arbitrator as may be nominated by agreement between the parties to the arbitration, or failing such agreement, not later than 21 days after a notice in writing given by one of the parties to the arbitration, by the President for the time being of the Law Society of Ireland.
- (b) Every reference to arbitration made pursuant to *paragraph (a)* shall be deemed to be a submission to arbitration within the meaning of the Arbitration Act 2010.
- (8) The provisions of the Arbitration Act 2010 applicable to arbitrations referred to in section 29 of that Act shall apply to an arbitration referred to in *subsection (7)*.
- (9) The Minister shall, for the purpose of the performance of the functions to which this section applies, make regulations providing for all or any of the following:
- (a) other than in the case of emergency, the period of notice to be given to the owner concerned before entering on land;
 - (b) the form and manner in which notice shall be given under *paragraph (a)*;
 - (c) the information to be included in a notice under *paragraph (a)*, including, but not limited to—
 - (i) entry points,
 - (ii) the programme of work,
 - (iii) the date of commencement of work,
 - (iv) the supervision of work,
 - (v) the contact details of the person to whom queries regarding work may be addressed,

- (vi) the preparation of a written record of the condition of the land concerned to be agreed with the owner concerned before the commencement of work,
 - (vii) reinstatement of land to a condition equivalent to that existing before the commencement of work,
 - (viii) completion of work,
 - (ix) the precautions to be taken, after consultation with the owner concerned, to prevent livestock straying, and
 - (x) any other matter which may restrict or otherwise affect the owner's use or enjoyment of the land concerned;
- (d) other than in the case of emergency, consultation with the owner concerned before giving notice under *paragraph (a)*, and the form and manner of such consultation;
- (e) the reasonable steps to be taken to—
- (i) minimise any restrictions on use or enjoyment of land as a consequence of the performance of the functions to which this section applies,
 - (ii) minimise any damage to land, and
 - (iii) make good within a reasonable time any loss or damage caused to land as a consequence of the performance of the functions to which this section applies or reimburse the owner the reasonable costs and expenses of such making good;
- (f) such other matters relating to the performance of the functions to which this section applies as the Minister considers appropriate.
- (10) Regulations under this section shall—
- (a) apply to such class or classes of persons, work or cases as may be specified in the regulations, and
 - (b) contain such incidental, supplementary and consequential provisions as appear to the Minister to be necessary or expedient for the purposes of the regulations.

Performance of functions

6. The functions conferred on the Minister by this Act may be performed by such of his or her servants, officers, agents, contractors or licensees and all other persons as may be appointed or authorised by the Minister to act in that behalf.

Application of section 72 of Registration of Title Act 1964

7. Section 72 of the Registration of Title Act 1964 shall apply to the legal interests vested in the Minister under *section 3* in the same manner and to the like extent as the said section 72 applies to any other burden which affects registered land without registration.

Deposited map

8. (1) The Minister shall deposit in the offices of the Department a map (in this Act referred to as the “deposited map”) bearing thereon the words “Deposited under *section 8* of the *Telecommunications Services (Ducting and Cables) Act 2018*” and showing the route.
- (2) The deposited map shall be retained in the Department.
- (3) The Minister shall make the deposited map available for inspection, free of charge, by any person at all reasonable times at the offices of the Department.
- (4) A copy of the deposited map or any particular part of it shall be given to a person who requests it on payment of a fee which shall not exceed the reasonable cost of copying the map or part of it.
- (5) (a) *Prima facie* evidence of the deposited map or any specified part of it may be given in any court or any legal proceedings by the production of a copy of it purporting to be certified to be a copy by an officer of the Minister, authorised by the Minister, in that behalf.
- (b) It shall not be necessary to prove the signature of the officer referred to in *paragraph (a)* or that he or she was in fact such officer or was so authorised for the purposes of this subsection.

Notice of vesting day

9. (1) The Minister shall, not later than 28 days before the vesting day—
- (a) publish once each week in 2 successive weeks in *Iris Oifigiúil* and in at least one local newspaper and in a national daily newspaper, published in the State and circulating in the area in which any part of the route is located or, if there is no local newspaper circulating in the area concerned, in at least 2 such national daily newspapers,
- (b) subject to *subsection (3)*, give to every person appearing to the Minister, following reasonable enquiry, to be an owner, by prepaid registered letter to the address at which the owner carries on business or ordinarily resides or, in a case in which an address for service has been furnished, to that address, and
- (c) publish on the website of the Department,
- a notice stating the information specified in *subsection (2)*.
- (2) The notice under *subsection (1)* shall state—
- (a) the vesting day,
- (b) that certain legal interests shall vest in the Minister under this Act for the purpose of the performance by the Minister of his or her functions for telecommunications purposes,
- (c) that the deposited map is available for inspection as provided for by *section 8*, and

- (d) that any owner claiming compensation under *section 4* shall submit his or her claim to the Minister at an address specified in the notice within the period specified in that section.
- (3) Where, upon making reasonable enquiries, the name and address of an owner required to be given notice under *paragraph (b)* of *subsection (1)* cannot be ascertained, the notice published under *paragraph (a)* of that subsection shall be deemed to be notice for the purposes of the said *paragraph (b)*.

Giving of notices

- 10.** (1) Subject to *subsections (2)* and *(3)* and *section 9(1)(b)*, a notice that is required to be given to a person under this Act shall be in writing and addressed to the person concerned by name, and may be so given to the person in one or more than one of the following ways:
- (a) by delivering it to the person;
 - (b) by leaving it at the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, at that address;
 - (c) by sending it by post in a prepaid registered letter to the address at which the person carries on business or ordinarily resides or, in a case in which an address for service has been furnished, to that address;
 - (d) where the address at which the person ordinarily resides cannot be ascertained by reasonable inquiry and the notice relates to land, by delivering it to a person over the age of 16 years resident or employed at the lands, or by affixing it in a conspicuous position at or near the lands;
 - (e) by electronic means, in a case in which the person has given notice in writing to the person giving the notice concerned of his or her consent to the notice (or notices of a class to which the notice belongs) being given to him or her in that manner.
- (2) Where a notice under this Act is to be given to a person who is the owner or occupier of land or property and the name of the person cannot be ascertained by reasonable inquiry, it may be addressed to the person by using the words “the owner” or, as the case may require, “the occupier”.
- (3) For the purpose of this section, a company within the meaning of the Companies Acts or the Companies Act 2014 shall be deemed to be ordinarily resident at its registered office, and every other body corporate and every unincorporated body of persons shall be deemed to be ordinarily resident at its principal office or place of business.

Laying of regulations and order

- 11.** Every regulation made under *section 5* and an order made under *section 3(1)* shall be laid before each House of the Oireachtas as soon as may be after it is made and, if a resolution annulling the regulation or order is passed by either such House within the

next 21 days on which that House sits after the regulation or order is laid before it, the regulation or order shall be annulled accordingly, but without prejudice to the validity of anything previously done thereunder.

Expenses

- 12.** The expenses incurred by the Minister in the administration of this Act shall, to such extent as may be sanctioned by the Minister for Public Expenditure and Reform, be paid out of moneys provided by the Oireachtas.

Short title and commencement

- 13.** (1) This Act may be cited as the Telecommunications Services (Ducting and Cables) Act 2018.
- (2) This Act shall come into operation on such day or days as the Minister may appoint by order or orders whether generally or with reference to any particular purpose or provision and different days may be so appointed for different purposes or different provisions.

SCHEDULE 1

*Section 3(2)*LEGAL INTERESTS VESTED IN MINISTER UNDER *SECTION 3(2)*

The rights to lay, construct, use, inspect, maintain, repair, replace, remove or render unusable any ducting and cables for telecommunications purposes together with the right to introduce and place all necessary apparatus ancillary thereto on, over or beneath the surface of land of an owner that consists of any part of the route (in this Schedule referred to as the “first-mentioned land”) together with the full and free right and liberty to pass and repass over the first-mentioned land for any of the purposes aforesaid and a right of way over any land of such owner adjoining the first-mentioned land for the purposes of access to the route at all reasonable times and at any time in the case of emergency in each case with all necessary equipment machinery and apparatus.

SCHEDULE 2

*Section 3(3)*LEGAL INTERESTS VESTED IN MINISTER UNDER *SECTION 3(3)*

The rights to lay, construct, use, inspect, maintain, repair, replace, remove or render unusable any ducting and cables for telecommunications purposes together with the right to introduce and place all necessary apparatus ancillary thereto on, over or beneath the surface of land of an owner that consists of any part of the route (in this Schedule referred to as the “first-mentioned land”) together with the full and free right and liberty of the Minister to pass and repass over the first-mentioned land for any of the purposes aforesaid and a right of way over any land of such owner adjoining the first-mentioned land for the purposes of access to the route at all reasonable times and at any time in the case of emergency in each case with all necessary equipment machinery and apparatus.

SCHEDULE 3

Section 3(2) and (3)

OBLIGATIONS

1. In performing all or any of the functions conferred on the Minister by this Act the Minister shall—
 - (a) take all reasonable precautions to avoid obstruction or interference with the user of land and damage and injury thereto, and
 - (b) so far as is reasonably practicable and with all practicable speed, make good all damage or injury to land caused by the performance by the Minister of those functions.
2. So far as is reasonably practicable and so long as the ducting and cables are used for or in connection with the performance by the Minister of any of his or her functions for telecommunications purposes, the Minister shall keep the ducting and cables in proper repair and condition, and upon permanent abandonment of the ducting and cables (of which notice shall be given to the owner by the Minister)—
 - (a) render the same permanently safe, and
 - (b) surrender back the same vested in the Minister by this Act to the owner.
3. The Minister shall indemnify and keep indemnified the owner, his or her servants, agents, licences and invitees against all sums in respect of loss or damage, claims, demands, costs and expenses which the owner shall become legally liable to pay as compensation for accidental bodily injury or accidental loss of or damage to property where such injury or damage is caused by, arises from, is traceable to or connected with the performance by the Minister, his or her servants, officers, agents, contractors, licensees or any other persons appointed or authorised by the Minister to act in that behalf of all or any of the functions conferred on the Minister by this Act, other than in consequence of any malicious act or omission of the owner, provided that the owner shall not settle or compromise any action, claim or demand without the prior consent of the Minister.
4. The Minister shall pay all rates and taxes which may be imposed on an owner in respect of the ducting and cables or the legal interests vested in the Minister under *section 3* and any increased rates, taxes or insurance premiums which may be imposed on the owner, in respect of land of that owner adjoining his or her land that consists of any part of the route, by virtue of the existence of the ducting and cables.
5. The Minister shall not do or cause deliberately or recklessly permit or suffer to be done anything calculated or likely to cause damage or injury to the Mayo-Galway pipeline.
6. (1) An owner shall not—
 - (a) do or cause deliberately or recklessly permit or suffer to be done anything calculated or likely to cause damage or injury to the ducting and cables,

- (b) without the prior consent in writing of the Minister (which shall not be unreasonably withheld), make or cause or recklessly permit or suffer to be made any material alteration to or any deposit of anything upon any part of the route so as to interfere with or obstruct the access thereto or to the ducting and cables by the Minister or so as to lessen or in any way interfere with the support afforded to the ducting and cables by the surrounding soil including minerals or so as materially to reduce the depth of soil above the ducting and cables,
 - (c) erect or install or cause or recklessly permit or suffer to be erected or installed any building or structure or permanent apparatus or the carrying out of any works on, over or beneath the surface of the route or the making of any material change in the use of the route which would be likely to cause damage or injury to the ducting and cables,
 - (d) plant or grow within 7 metres of the centre line of the ducting and cables any poplar trees, willow trees, ash trees, beech trees, conifers, horse chestnut trees, lime trees, maple trees, sycamore trees, apple trees or pear trees, or any other trees of a similar size (whether deciduous or evergreen),
 - (e) allow any shrubs or hedges planted on the route to grow to a height exceeding 4 metres.
- (2) Nothing in *clauses (a) to (c) of subparagraph (1)* shall prevent an owner from installing any necessary service pipes, drains, wires or cables under the supervision and with the consent (which consent shall not be unreasonably withheld) of the Minister or the carrying on of normal agricultural operations or acts of good husbandry including fencing, hedging and ditching not causing such interference, obstruction or material reduction in the depth of the soil as referred to in those clauses.