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Section 41(1) of the ESA 1990 provides registered licensees with an additional statutory civil right/civil cause of action to claim compensation from the offender for the relevant damage based on the strict liability principle. This legal observation is based on the phrase “wilfully or otherwise” in the aforesaid provision. Hence, the element of the offender’s intention is irrelevant. It is sufficient for the registered licensee to only prove the identity of the offender, act of the offender that caused damage and the damage itself. This principle applies even if the cables are buried deep underground with no cable markers placed on the surface land to alert possible offenders.

Besides Section 41 of the ESA 1990, registered licensees also have the option of filing a suit against the offender for a variety of criminal offences relating to damage of installations which are provided for in Sections 37(1)-(15), 37(A) or (37B) of the same Act. Nonetheless, parliament recognised the need for registered licensee to be compensated for the damage of their installations and had therefore included an additional jurisdiction in the Criminal Court via Section 41(2) to assess and make orders for compensation payable to registered licensee that is enforceable in the civil courts.

In summary, Section 41 of the ESA 1990 is a versatile provision due to its dual jurisdiction characteristic which allows it to be applied in both criminal and civil courts. Hence, guilty offenders cannot evade their responsibility to pay compensation, regardless if they are charged in the criminal or civil courts. So, you damage, you pay.

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