

## SCHEDULES

### SCHEDULE 13

#### PROTECTIVE PROVISIONS

### PART 10

#### FOR THE PROTECTION OF WATER AND SEWERAGE UNDERTAKERS

1. The provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the utility undertaker concerned.

2. In this Part of this Schedule—

“alternative apparatus” means any temporary or permanent alternative apparatus adequate to enable the utility undertaker in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means—

(a) in the case of a water undertaker, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and

(b) in the case of a sewerage undertaker—

(i) any drain or works vested in that undertaker under the Water Industry Act 1991<sup>M1</sup>; and

(ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)<sup>M2</sup> (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104<sup>M3</sup> (agreements to adopt sewer, drain or sewage disposal works, at future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed;

“utility undertaker” means—

(a) a water undertaker within the meaning of the Water Industry Act 1991; and

(b) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

**Marginal Citations**

- M1** 1991 c. 56.
- M2** Section 102(4) was amended by sections 56 and 96(1)(c) to (e) of, and paragraphs 2 and 90 of Schedule 7 to, the [Water Act 2014 \(c. 21\)](#).
- M3** Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003 (c. 37), section 42(3) of the [Flood and Water Management Act 2010 \(c. 29\)](#) and sections 11 and 56 of, and paragraphs 2 and 91 of Schedule 7 to, the [Water Act 2014 \(c. 21\)](#).

**On street apparatus**

3. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the utility undertaker are regulated by the provisions of Part 3 of the 1991 Act.

**Apparatus in stopped up streets**

4.—(1) Where any street is stopped up under article 10 (permanent stopping up of streets), any utility undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the utility undertaker legal easements reasonably satisfactory to the utility undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the utility undertaker to require the removal of that apparatus under paragraph 6 of this Part of this Schedule or the power of the undertaker to carry out works under paragraph 8 of this Part of this Schedule.

(2) Regardless of the temporary stopping up or diversion of any street under the powers conferred by article 11 (temporary stopping up of streets), a utility undertaker is at liberty at all times to take all necessary access across any such stopped up street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that street.

**Acquisition of land**

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

**Removal of apparatus**

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that the utility undertaker's apparatus is relocated or diverted, that apparatus must not be removed, diverted or otherwise altered under this Part of this Schedule, and/or any right of a utility undertaker to maintain apparatus in that land must not be extinguished, or made incapable of being exercised unless—

- (a) it is in the reasonable opinion of the undertaker necessary for the purpose of carrying out the authorised development;
- (b) any alternative, diverted or relocated apparatus required by the utility undertaker (acting reasonably) has been constructed and is in operation to the reasonable satisfaction of the utility undertaker in question in accordance with sub-paragraphs (2) to (6);
- (c) any rights required by the utility undertaker (acting reasonably) including to install, access, retain, replace, divert, relocate and maintain any apparatus or alternative apparatus have been granted to the reasonable satisfaction of the utility undertaker; and

- (d) any of the apparatus or alternative apparatus referred to in paragraph (b) or rights required and referred to in paragraph (c) do not in the reasonable opinion of the utility undertaker cause a material increase in the time, resources of and costs to the utility undertaker in using, operating or maintaining its apparatus unless agreed otherwise by the utility undertaker.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal, diversion or alteration of any apparatus placed in that land, the undertaker must give to the utility undertaker in question 28 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order an undertaker reasonably needs to remove any apparatus) the undertaker must, subject to sub-paragraph (3), afford to the utility undertaker the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus, and the utility undertaker may elect to leave in situ any apparatus that the undertaker requires to be removed provided that it permits the undertaker to remove the apparatus and at its own cost in place of the utility undertaker.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed the utility undertaker must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the utility undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) The utility undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47, and after the grant to the utility undertaker of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), and in accordance with a timetable to be agreed with the undertaker (both parties acting reasonably) such timetable to have due and proper regard to the utility undertaker's statutory obligations with regard to its apparatus and undertaking including its obligation to maintain the supply of clean water at all times, proceed without unnecessary delay to construct and bring into operation the alternative apparatus and, subject to the provisions of sub-paragraph (2) of this paragraph, subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the utility undertaker in question that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by the utility undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the utility undertaker.

(7) Nothing in sub-paragraph (6) authorises the undertaker to execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is lain in a trench) within 300 millimetres of apparatus which is not being removed, diverted or altered without the consent of the utility undertaker (such consent not to be unreasonably withheld or delayed).

## **Facilities and rights for alternative apparatus**

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a utility undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and the utility undertaker in question or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(2) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to the utility undertaker in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to that utility undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

## **Retained apparatus**

8.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal, diversion or alteration of which has not been required by the undertaker under paragraph 6(2) of this Part of this Schedule, the undertaker must submit to the utility undertaker in question for approval (such approval not to be unreasonably withheld or delayed and in any event within 17 working days) a plan, section and description of the works to be executed including (where appropriate) the proposed details of and location of alternative apparatus.

(2) Those works must be executed only in accordance with the plan approved under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the utility undertaker for the alteration or otherwise of the works necessary for the protection of apparatus, or for securing access to it, and the utility undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by a utility undertaker under sub-paragraph (2) must be made within a period of 17 working days beginning with the date on which a plan, section and/or description of the works under sub-paragraph (1) is submitted to it.

(4) If a utility undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 of this Part of this Schedule apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a new plan section and description for approval of the utility undertaker (such approval not to be unreasonably withheld or delayed and in any event within 17 working days) instead of the plan, section or description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to the utility undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and it must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances and it must not under any circumstances interfere with the apparatus of the utility undertaker or do anything that would interfere with or prevent the use of that apparatus without the express permission of the utility undertaker.

(7) The utility undertaker must acknowledge any notice received from the undertaker pursuant to sub-paragraph (6) without delay and within not more than 24 hours of receipt of such notice and it must agree with the undertaker as soon as reasonably possible exercising all reasonable endeavours a scheme of works necessary to address the emergency and which works may at the utility undertaker's absolute discretion be carried out by the undertaker, and the utility undertaker must without delay cooperate with the undertaker to address the emergency in so far as it may interfere with the apparatus of the utility undertaker or do anything that would interfere with or prevent the use of that apparatus.

### **Expenses and costs**

**9.**—(1) Subject to the sub-paragraph (2), the undertaker must repay to a utility undertaker all expenses reasonably incurred by that utility undertaker in, or in connection with, the approval of plans, specification, descriptions, inspection, installation, removal, diversion, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 8(2) of this Part of this Schedule and the reasonable costs of securing any rights which the utility undertaker requires (acting reasonably).

(2) There must be deducted from any sum payable under sub-paragraph (1) a sum, equivalent to 7.5% of the costs of any of those matters referred to in sub-paragraph (1) occasioned by the creation of new traffic islands at—

- (a) the A5 between Gailey Bridge (on the Staffordshire and Worcestershire Canal) and Calf Heath Reservoir; and
- (b) Junction of the A449 Stafford Road with Crateford Lane and Gravelly Lane.

**10.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the exercise of any rights or powers under this Order, or construction of any such works referred to in paragraphs 6 or 8(2) of this Part of this Schedule, or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus (whether unaltered, diverted or relocated) or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works) or property of a utility undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any utility undertaker, or there is an increase in the cost to the utility undertaker of carrying out its statutory obligations or providing services or goods or operating or maintaining its apparatus or any omission by the undertaker or its agents causes any such matter the undertaker must—

- (a) bear and pay the cost reasonably incurred by that utility undertaker in making good such damage or restoring the supply; and
- (b) indemnify that utility undertaker for any other expenses, loss, proceedings, damages, claims, penalty or costs incurred by the utility undertaker, by reason or in consequence of any such damage or interruption or increase in costs or the utility undertaker becoming liable to any third party as aforesaid other than arising from any default of the utility undertaker.

(2) The fact that any act or thing may have been done by a utility undertaker on behalf of the undertaker or in accordance with a plan, specification or description approved by a utility undertaker or in accordance with any requirement of a utility undertaker or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of a utility undertaker, its officers, servants, contractors or agents.

(4) A utility undertaker must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker

**Changes to legislation:** There are currently no known outstanding effects for the The West Midlands Rail Freight Interchange Order 2020, PART 10. (See end of Document for details)

who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

### **Cooperation**

**11.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or a utility undertaker requires the removal, diversion or alteration of apparatus under paragraph 6(2) of this Part of this Schedule or a utility undertaker makes requirements for the protection or alteration of apparatus under paragraph 8 of this Part of this Schedule, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the utility undertaker's undertaking and each utility undertaker must use its best endeavours to co-operate with the undertaker for that purpose.

**12.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and a utility undertaker in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

**Changes to legislation:**

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