

*Status: Point in time view as at 28/12/2017.*

*Changes to legislation: There are currently no known outstanding effects for the Water Resources Act 1991, SCHEDULE 22. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 22

Section 178.

#### PROTECTION FOR PARTICULAR UNDERTAKINGS

**Modifications etc. (not altering text)**

**C1** Sch. 22 applied (1.12.1991) by [Land Drainage Act 1991 \(c. 59, SIF 73:1\)](#), **ss. 67(2), 76(2)**

*General provisions protecting undertakings*

- 1 (1) Nothing in any of the provisions of this Act conferring power on the [<sup>F1</sup>appropriate agency] to carry out any works shall confer power to do anything, except with the consent of the persons carrying on an undertaking protected by this paragraph, which, whether directly or indirectly, so interferes or will so interfere—
- (a) with works or property vested in or under the control of the persons carrying on that undertaking, in their capacity as such; or
  - (b) with the use of any such works or property,
- as to affect injuriously those works or that property or the carrying on of that undertaking.
- (2) A consent for the purposes of sub-paragraph (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (3) Subject to the following provisions of this Schedule, any dispute—
- (a) as to whether anything done or proposed to be done interferes or will interfere as mentioned in sub-paragraph (1) above;
  - (b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or
  - (c) as to whether any condition subject to which any such consent has been given was reasonable,
- shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (4) The following are the undertakings protected by this paragraph, that is to say-
- (a) the undertakings of the Civil Aviation Authority, [<sup>F2</sup>the Coal Authority] and [<sup>F3</sup>a universal service provider (so far as it is his undertaking in relation to the provision of a universal postal service)];
  - (b) the undertaking of any water undertaker or sewerage undertaker;
  - [<sup>F4</sup>(c) any undertaking consisting in the provision of an electronic communications network;]
  - (d) any airport to which Part V of the <sup>M1</sup>Airports Act 1986 applies;

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- (e) the undertaking of any public gas supplier within the meaning of Part I of the <sup>M2</sup>Gas Act 1986;
  - (f) the undertaking of any person authorised by a licence under Part I of the <sup>M3</sup>Electricity Act 1989 to generate, [<sup>F5</sup>supply or participate in the transmission of] electricity;
  - (g) the undertaking of any navigation authority, harbour authority or conservancy authority or of any internal drainage board;
  - (h) the undertaking of any railway company;
  - (i) any public utility undertaking carried on by a local authority under any Act or under any order having the force of an Act.
  - [<sup>F6</sup>(j) the undertaking of any licensed operator, within the meaning of the Coal Industry Act 1994;]
  - [<sup>F7</sup>(k) the undertaking of a person who holds a licence under Chapter I of Part I of the Transport Act 2000 (air traffic services) to the extent that it is the person's undertaking as licence holder.]
- (4A) In sub-paragraph (4)(a) above "universal service provider" has the same meaning as in [<sup>F8</sup>Part 3 of the Postal Services Act 2011]; and the reference to the provision of a universal postal service shall be construed in accordance with [<sup>F9</sup>that Part].
- (5) For the purposes of this paragraph any reference in this paragraph, in relation to any such airport as is mentioned in sub-paragraph (4)(d) above, to the persons carrying on the undertaking is a reference to the airport operator.
- (6) The reference in sub-paragraph (1) above to the provisions of this Act conferring power to carry out works includes (without prejudice to the extent of that reference apart from this sub-paragraph) a reference to any provisions of any order under section 108 of this Act by virtue of which any such power is conferred.

#### Textual Amendments

- F1** Words in Sch. 22 para. 1(1) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), [art. 1\(2\)](#), [Sch. 2 para. 314\(2\)](#) (with Sch. 7)
- F2** Words in Sch. 22 para. 1(4)(a) substituted (31.10.1994) by 1994 c. 21, s. 67, [Sch. 9 para. 43\(1\)\(a\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F3** Words in Sch. 22 para. 1(4)(a) substituted (26.3.2001) by S.I. 2001/1149, [art. 3\(1\)](#), [Sch. 1 para. 89\(2\)](#)
- F4** Sch. 22 para. 1(4)(c) substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by [Communications Act 2003 \(c. 21\)](#), s. 411(2), [Sch. 17 para. 114\(2\)](#) (with Sch. 18); S.I. 2003/1900, [arts. 1\(2\)](#), 2(1), [Sch. 1](#) (with [art. 3](#)) (as amended by S.I. 2003/3142, [art. 1\(3\)](#)); S.I. 2003/3142, [art. 3\(2\)](#) (with [art. 11](#))
- F5** Words in Sch. 22 para. 1(4)(f) substituted (1.9.2004) by [Energy Act 2004 \(c. 20\)](#), s. 198(2), [Sch. 19 para. 18](#); S.I. 2004/2184, [art. 2\(2\)](#), [Sch. 2](#)
- F6** Sch. 22 para. 1(4)(j) inserted (31.10.1994) by 1994 c. 21, s. 67, [Sch. 9 para. 43\(1\)\(b\)](#) (with s. 40(7)); S.I. 1994/2553, [art. 2](#)
- F7** Sch. 22 para. 1(4)(k) inserted (1.4.2001) by 2000 c. 38, s. 37, [Sch. 5 para. 15](#) (with s. 106); S.I. 2001/869, [art. 2](#)
- F8** Words in Sch. 22 para. 1(4A) substituted (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), [Sch. 12 para. 138\(a\)](#); S.I. 2011/2329, [art. 3](#)
- F9** Words in Sch. 22 para. 1(4A) substituted (1.10.2011) by [Postal Services Act 2011 \(c. 5\)](#), s. 93(2)(3), [Sch. 12 para. 138\(b\)](#); S.I. 2011/2329, [art. 3](#)

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**Modifications etc. (not altering text)**

- C2** Sch. 22 para. 1(4)(e) amended (1.3.1996) by 1995 c. 45, s. 16(1), **Sch. 4 para. 2(2)(n)**; S.I. 1996/218, **art. 2**

**Marginal Citations**

- M1** 1986 c. 31.  
**M2** 1986 c. 44.  
**M3** 1989 c. 29.

*Protection for statutory powers and jurisdiction*

- 2 (1) Subject to sub-paragraph (2) below, nothing in—
- (a) any provision of this Act conferring power on the [<sup>F10</sup>appropriate agency] to carry out any works; or
  - (b) any of the flood defence provisions of this Act,
- shall confer power to do anything which prejudices the exercise of any statutory power, authority or jurisdiction from time to time vested in or exercisable by any persons carrying on an undertaking protected by paragraph 1 above.
- (2) Nothing in this paragraph shall be taken to exclude the application of section 109 of this Act to any work executed by persons carrying on an undertaking protected by paragraph 1 above.
- (3) Sub-paragraph (6) of paragraph 1 above shall apply for the purposes of sub-paragraph (1) above as it applies for the purposes of sub-paragraph (1) of that paragraph.
- (4) This paragraph shall be without prejudice to any power under this Act to transfer the functions of any authority.

**Textual Amendments**

- F10** Words in Sch. 22 para. 2(1)(a) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), **Sch. 2 para. 314(2)** (with Sch. 7)

*Special protection for certain undertakings in respect of street works*

- 3 (1) Subject to the following provisions of this paragraph and without prejudice to the other provisions of this Schedule, the powers under the street works provisions to break up or open a street shall not be exercisable where the street, not being a highway maintainable at public expense (within the meaning of the <sup>M4</sup>Highways Act 1980)—
- (a) is under the control or management of, or is maintainable by, a railway company or a navigation authority; or
  - (b) forms part of a level crossing belonging to such a company or authority or to any other person,
- except with the consent of the company or authority or, as the case may be, of the person to whom the level crossing belongs.
- (2) Sub-paragraph (1) above shall not apply to any exercise of the powers conferred by the street works provisions for the carrying out of emergency works, within the meaning of Part III of the <sup>M5</sup>New Roads and Street Works Act 1991.

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- (3) A consent given for the purposes of sub-paragraph (1) above may be made subject to such reasonable conditions as may be specified by the person giving it but shall not be unreasonably withheld.
- (4) Any dispute—
- (a) as to whether a consent for the purposes of sub-paragraph (1) above should be given or withheld; or
  - (b) as to whether the conditions to which any such consent is made subject are reasonable,
- shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.
- (5) If the [<sup>F11</sup>appropriate agency] contravenes, without reasonable excuse, the requirements of sub-paragraph (1) above, it shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 3 on the standard scale.
- (6) The restrictions contained in paragraphs (1) to (5) of section 32 of the <sup>M6</sup>Tramways Act 1870 (protection of tramways) shall apply in relation to any exercise of a power conferred by the street works provision s—
- (a) as they apply in relation to the powers mentioned in that section; and
  - (b) as if references in that section to a tramway included references to a trolley vehicle system.
- (7) In this paragraph “the street works provisions” means sections 159 and 162(2) of this Act.
- (8) Until the coming into force of section 52 of the New Roads and Street Works Act 1991, sub-paragraph (2) above shall have effect as if the reference to Part III of that Act were a reference to the <sup>M7</sup>Public Utilities Street Works Act 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing that section 52 into force on different days for different purposes (including the purposes of this paragraph).

#### Textual Amendments

**F11** Words in Sch. 22 para. 3(5) substituted (1.4.2013) by [The Natural Resources Body for Wales \(Functions\) Order 2013 \(S.I. 2013/755\)](#), art. 1(2), [Sch. 2 para. 314\(2\)](#) (with Sch. 7)

#### Marginal Citations

**M4** 1980 c. 66.  
**M5** 1991 c. 22.  
**M6** 1870 c. 78.  
**M7** 1950 c. 39.

#### *Protection for railways in connection with carrying out of flood defence functions*

- 4 (1) Without prejudice to the preceding provisions of this Schedule, nothing in the flood defence provisions of this Act shall authorise any person, except with the consent of the railway company in question, to interfere with—
- (a) any railway bridge or any other work connected with a railway; or

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- (b) the structure, use or maintenance of a railway or the traffic on it.
- (2) A consent for the purposes of sub-paragraph (1) above may be given subject to reasonable conditions but shall not be unreasonably withheld.
- (3) Subject to the following provisions of this Schedule, any dispute—
- (a) as to whether anything interferes, or will interfere, as mentioned in sub-paragraph (1) above;
  - (b) as to whether any consent for the purposes of this paragraph is being unreasonably withheld; or
  - (c) as to whether any condition subject to which any such consent has been given was reasonable,
- shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the parties to the dispute or, in default of agreement, by the President of the Institution of Civil Engineers.

*[<sup>F12</sup>Protection for electronic communications networks]*

**Textual Amendments**

- F12** Sch. 22 para. 5 cross-heading substituted (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), Sch. 3 para. 31(b); S.I. 2017/1286, reg. 2(d)

- 5 <sup>F13</sup>Part 10 of Schedule 3A to the Communications Act 2003 (the electronic communications code)] (which provides a procedure for certain cases where works involve the alteration of [<sup>F14</sup>electronic communications apparatus]) shall apply to the [<sup>F15</sup>appropriate agency] for the purposes of any works carried out by the [<sup>F15</sup>appropriate agency] in exercise of any of the powers conferred by any enactment (including [<sup>F16</sup>section 37 of the 1995 Act ]<sup>F17</sup>or, as the case may be, article 9 of the Natural Resources Body for Wales (Establishment) Order 2012 (S.I.2012/1903)).

**Textual Amendments**

- F13** Words in Sch. 22 para. 5 substituted (28.12.2017) by Digital Economy Act 2017 (c. 30), s. 118(6), Sch. 3 para. 31(a); S.I. 2017/1286, reg. 2(d)
- F14** Words in Sch. 22 para. 5 substituted (25.7.2003 for specified purposes, 29.12.2003 in so far as not already in force) by Communications Act 2003 (c. 21), s. 411(2), Sch. 17 para. 114(3) (with Sch. 18); S.I. 2003/1900, arts. 1(2), 2(1), Sch. 1 (with art. 3) (as amended by S.I. 2003/3142, art. 1(3)); S.I. 2003/3142, art. 3(2) (with art. 11)
- F15** Words in Sch. 22 para. 5 substituted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 314(3)(a) (with Sch. 7)
- F16** Words in Sch. 22 para. 5 substituted (1.4.1996) by 1995 c. 25, s. 120, Sch. 22 para. 189 (with ss. 7(6), 115, 117); S.I. 1996/186, art. 3
- F17** Words in Sch. 22 para. 5 inserted (1.4.2013) by The Natural Resources Body for Wales (Functions) Order 2013 (S.I. 2013/755), art. 1(2), Sch. 2 para. 314(3)(b) (with Sch. 7)

*Interpretation*

- 6 In this Schedule “railway company” means the British Railways Board, [<sup>F18</sup>Transport for London or any subsidiary (within the meaning of the Greater

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London Authority Act 1999) of Transport for London,] or any other person authorised by any enactment, or by any order, rule or regulation made under any enactment, to construct, work or carry on a railway.

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**Textual Amendments**

**F18** Words in Sch. 22 para. 6 substituted (15.7.2003) by [The Transport for London \(Consequential Provisions\) Order 2003 \(S.I. 2003/1615\)](#), art. 1(1), **Sch. 1 para. 16(3)**

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