

*Status: Point in time view as at 23/02/2017.*

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## SCHEDULES

### SCHEDULE 2

Section 2(4)

#### WORKS

#### PART 1

##### FURTHER AND SUPPLEMENTARY PROVISIONS

##### *Authority to survey and investigate land etc*

- 1 (1) The nominated undertaker may for the purposes of this Act—
- (a) survey or investigate land which is within the Act limits or which may be affected by the works authorised by this Act;
  - (b) take steps to protect or remove any flora or fauna on land which may be affected by the carrying out of the works authorised by this Act.
- (2) The power in sub-paragraph (1)(a) includes power to—
- (a) make trial holes in such positions as the nominated undertaker thinks fit on the land to investigate the nature of the surface layer and subsoil;
  - (b) carry out ecological or archaeological investigations on the land;
  - (c) take samples of anything in or on the land.
- (3) Sub-paragraph (2)(a) does not authorise the making of trial holes in a carriageway or footway without the consent of the highway authority; but such consent must not be unreasonably withheld.
- (4) Any dispute as to the giving of consent under sub-paragraph (3) must be referred to arbitration if the parties so agree; but must otherwise be determined by the Secretary of State.
- (5) In connection with the exercise of the powers in sub-paragraph (1) the nominated undertaker may—
- (a) place or leave apparatus for use in connection with those powers on, and remove such apparatus from, land within the Act limits or land which may be affected by the works authorised by this Act;
  - (b) enter on land within the Act limits or land which may be affected by the works authorised by this Act,
- and the land referred to in paragraphs (a) and (b) need not be the same as the land in relation to which the powers in sub-paragraph (1) are being or are to be exercised.
- (6) No land may be entered, or apparatus placed or left on or removed from land, under this paragraph unless at least 7 days' notice has been given to every owner and occupier of the land.

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### *Support of buildings*

- 2 (1) The nominated undertaker may support or strengthen a building within the relevant distance of any of the works authorised by this Act if—
- (a) it is necessary or expedient, in consequence of or for the purposes of or in connection with the construction of the work, for the building to be supported or strengthened, and
  - (b) the nominated undertaker gives at least 8 weeks' notice to the owners and occupiers of the building of its intention to support or strengthen it.
- (2) If, within 21 days of the giving of a notice under sub-paragraph (1)(b), the person to whom the notice has been given gives to the nominated undertaker notice disputing that the condition in sub-paragraph (1)(a) is met, the dispute must be referred to arbitration.
- (3) If—
- (a) under sub-paragraph (2) the arbitrator decides that the condition in sub-paragraph (1)(a) is met, and
  - (b) one of the parties to the dispute so requires,
- the arbitrator must prescribe how the supporting or strengthening is to be carried out.
- (4) Where the supporting or strengthening of a building under this paragraph cannot be carried out reasonably conveniently without entering land adjacent to the building, the nominated undertaker may, on giving at least 14 days' notice to the owners and occupiers of the adjacent land, enter the land (but not any building on it) and carry out the work.
- (5) In case of emergency, the power under sub-paragraph (1) or (4) is exercisable without notice.
- (6) For the purpose of deciding whether or how to exercise its powers under this paragraph, the nominated undertaker may enter and survey—
- (a) any building within the relevant distance of any of the works authorised by this Act, or
  - (b) any land adjacent to such a building (but not any building on any such land).
- (7) The nominated undertaker may, in connection with the exercise of the power under this paragraph to support or strengthen a building, place and leave (temporarily or permanently) any equipment or material in, next to or under the building or on or under land in the vicinity of the building.
- 3 (1) The nominated undertaker may, at any time within the permitted period, further support or strengthen a building which has been supported or strengthened under paragraph 2 if—
- (a) it is necessary or expedient, in consequence of or for the purposes of or in connection with the construction of any of the works authorised by this Act, for the building to be further supported or strengthened, and
  - (b) the nominated undertaker gives at least 8 weeks' notice to the owners and occupiers of the building of its intention further to support or strengthen it.
- (2) In sub-paragraph (1), “the permitted period” is the period beginning with the completion of the supporting or strengthening under paragraph 2 and ending 5 years after the date on which the work which necessitated the supporting or strengthening was brought into general use.

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- (3) If, within 21 days of the giving of a notice under sub-paragraph (1)(b), the person to whom the notice has been given gives to the nominated undertaker notice disputing that the condition in sub-paragraph (1)(a) is met, the dispute must be referred to arbitration.
  - (4) If—
    - (a) under sub-paragraph (3), the arbitrator decides that the condition in sub-paragraph (1)(a) is met, and
    - (b) one of the parties to the dispute so requires,the arbitrator must prescribe how the supporting or strengthening is to be carried out.
  - (5) Where the supporting or strengthening of a building under this paragraph cannot be carried out reasonably conveniently without entering land adjacent to the building, the nominated undertaker may, on giving at least 14 days' notice to the owners and occupiers of the adjacent land, enter the land (but not any building on it) and carry out the work.
  - (6) In case of emergency, the power under sub-paragraph (1) or (5) is exercisable without notice.
  - (7) For the purpose of deciding whether or how to exercise its powers under this paragraph, the nominated undertaker may enter and survey—
    - (a) any building which has been supported or strengthened under paragraph 2, or
    - (b) any land adjacent to such a building (but not any building on any such land).
  - (8) Paragraph 2(7) (power to place and leave equipment or material) applies for the purposes of this paragraph.
- 4
- (1) The nominated undertaker may, for a purpose mentioned in sub-paragraph (2), affix movement-measuring apparatus to a building within the relevant distance of any of the works authorised by this Act on giving at least 8 weeks' notice to the owners and occupiers of the building of its intention to do so.
  - (2) The purposes referred to in sub-paragraph (1) are—
    - (a) determining the extent of any movement in the building;
    - (b) determining the effectiveness of support or strengthening work in respect of the building under paragraph 2 or 3.
  - (3) In a case where movement-measuring apparatus is to be affixed inside a building, the notice under sub-paragraph (1) must state that fact.
  - (4) If, within 21 days of the giving of the notice under sub-paragraph (1), the person to whom the notice has been given gives to the nominated undertaker notice objecting to the affixing of movement-measuring apparatus (generally or in relation to how or where it is affixed), the question must be referred to arbitration.
  - (5) Where, under sub-paragraph (4), the arbitrator decides that movement-measuring apparatus may be affixed to the building, the arbitrator must, if the nominated undertaker or the person who made the objection so requires, prescribe how or where the affixing of the apparatus is to be carried out.
  - (6) Where the affixing of movement-measuring apparatus under this paragraph cannot be carried out reasonably conveniently without entering land adjacent to the building, the nominated undertaker may, on giving at least 14 days' notice to the owners and

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occupiers of the adjacent land, enter the land (but not any building on it) and carry out the affixing.

- (7) The nominated undertaker may—
- (a) maintain, repair or alter the position of movement-measuring apparatus affixed under sub-paragraph (1);
  - (b) take readings or data from any such apparatus.
- (8) In case of emergency, the power under sub-paragraph (1) or (6) is exercisable without notice.
- (9) For the purpose of deciding whether or how to exercise its powers under this paragraph, the nominated undertaker may enter and survey—
- (a) any building within the relevant distance of any of the works authorised by this Act, or
  - (b) any land adjacent to such a building (but not any building on any such land).
- (10) In this paragraph, “movement-measuring apparatus” means apparatus for use in measuring any movement in a building or the ground on which a building is erected.
- 5 (1) Paragraphs 2 to 4 apply in relation to—
- (a) any apparatus belonging to a utility undertaker, and
  - (b) a relevant pipe-line belonging to a person other than a utility undertaker,
- as they apply in relation to a building, subject to the modifications specified in sub-paragraph (2).
- (2) Those modifications are that—
- (a) references to the owners and occupiers of a building are to be read as references to the owner of the apparatus or pipe-line;
  - (b) references to land adjacent to a building are to be read, in the case of apparatus or a pipe-line situated below the surface of the ground, as including land above the site of the apparatus or pipe-line;
  - (c) paragraph 2(7) applies as if the reference to placing or leaving equipment or material in, next to or under the building or on or under land in the vicinity of the building were to placing and leaving equipment or material on any land above, next to or below the site of the apparatus or pipe-line, or on or under land in the vicinity of that site.
- (3) In this paragraph, “relevant pipe-line” means—
- (a) a cross-country pipe-line (within the meaning of the Pipe-lines Act 1962), and
  - (b) a local pipe-line (within the meaning of that Act) in relation to the construction of which a direction under section 6 of that Act has or had effect.
- 6 (1) This paragraph has effect for the purposes of paragraphs 2 to 5.
- (2) “Building” includes any structure.
- (3) “Relevant distance”, in relation to any work, means—
- (a) 100 metres in any of the following cases—
    - (i) where the work is comprised in so much of Works Nos. 1/1 or 1/15 as lies between their commencement and the point where they pass beneath Parkway in the London Borough of Camden;

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- (ii) where the work is comprised in so much of Works Nos. 1/1 or 1/15 as lies between the points where they pass beneath Victoria Road and Chase Road in the London Borough of Camden;
    - (iii) where the work is comprised in Work No. 1/16;
    - (iv) where the work relates to the making of a shaft;
  - (b) 50 metres in any other case.
- (4) A building (or, in the case of paragraph 5, apparatus or pipe-line) is within the ““relevant distance”” of a work if all or part of it is within that distance.
- (5) In the case of a work under the surface of the ground, a reference to a building (or, in the case of paragraph 5, apparatus or pipe-line) within the relevant distance of that work includes a reference to a building (or apparatus or pipe-line) all or part of which is within the relevant distance of any point on the surface below which the work is situated.

#### *Trees on neighbouring land*

- 7
- (1) This paragraph applies where—
    - (a) a tree overhangs land used for Phase One purposes, or
    - (b) the roots of a tree encroach on such land.
  - (2) The nominated undertaker may by notice to the occupier of the land on which the tree is growing (a ““tree works notice””) require the tree to be removed, topped or lopped, or its roots to be cut back, if it is necessary for that to be done—
    - (a) to enable works authorised by this Act to be constructed or maintained, or
    - (b) for reasons of safety in connection with such works or the operation of Phase One of High Speed 2.
  - (3) The person to whom a tree works notice is given may object to the notice by giving the nominated undertaker a counter-notice to that effect before the end of 28 days beginning with the day on which the tree works notice is given.
  - (4) If a counter-notice is given, the tree works notice has no effect unless confirmed by an order of the county court.
  - (5) The nominated undertaker may carry out the works required by a tree works notice if the notice has been in effect for a continuous period of at least 28 days and has not been complied with.
  - (6) Where the power under sub-paragraph (5) is exercisable, the nominated undertaker may, after giving 7 days' notice to the occupier of the land on which the tree concerned is growing, enter the land for the purpose of exercising the power in relation to it.
  - (7) If the nominated undertaker tops or lops a tree, or cuts back the roots of a tree, in exercise of the power under sub-paragraph (5), it must do so—
    - (a) in accordance with good arboricultural practice, and
    - (b) in such a way as to cause the minimum of damage to the tree.
  - (8) The following do not apply to works required by a tree works notice—
    - (a) an order under section 198(1) or 202(1) of the Town and Country Planning Act 1990 and regulations under section 202A(1) of that Act (tree preservation orders);

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- (b) section 211(1) and (5) of that Act (preservation of trees in conservation areas).

*Discharge of water*

- 8 (1) The nominated undertaker may use any watercourse or any public sewer or drain for the drainage of water for the purposes of or in connection with the construction or maintenance of the works authorised by this Act and for that purpose—
- (a) may lay down, take up and alter pipes, and
  - (b) on any land within the Act limits, may make connections with the watercourse, sewer or drain.
- (2) The nominated undertaker must not discharge any water into any public sewer or drain except with the consent of the person to whom it belongs; and such consent may be given subject to such terms and conditions as that person may reasonably impose, but must not be unreasonably withheld.
- (3) The nominated undertaker must not make any opening into any public sewer or drain except—
- (a) in accordance with plans approved by the person to whom the sewer or drain belongs, such approval not to be unreasonably withheld; and
  - (b) where that person has been given the opportunity to supervise the making of the opening.
- (4) The nominated undertaker must not, in the exercise of the powers under this paragraph, damage or interfere with the beds or banks of any watercourse forming part of a main river.
- (5) The nominated undertaker must take such steps as are reasonably practicable to secure that any water discharged into a watercourse or public sewer or drain under the powers under this paragraph is as free as may be practicable from gravel, soil or other solid substance or oil or matter in suspension.
- (6) Nothing in this paragraph overrides the requirement for an environmental permit under regulation 12(1)(b) of the Environmental Permitting (England and Wales) Regulations 2016 (S.I. 2016/1154).
- (7) Any dispute as to the giving of consent under this paragraph must be referred to arbitration if the parties so agree, but must otherwise be determined by the Secretary of State.
- (8) In this paragraph—
- (a) “public sewer or drain” means a sewer or drain which belongs to a sewerage undertaker, the Environment Agency, the Homes and Communities Agency, an internal drainage board, a local authority, a joint planning board, an urban development corporation or a harbour authority within the meaning of the Harbours Act 1964;
  - (b) “watercourse” includes rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows, except a public sewer or drain;
  - (c) other expressions used both in this paragraph and in the Water Resources Act 1991 have the same meanings as in that Act.

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*Temporary interference with waterways*

- 9 (1) The powers under this paragraph are exercisable in relation to the following waterways for the purposes of or in connection with the works authorised by this Act—

Grand Union Canal (Regents Canal),  
Grand Union Canal (Paddington Branch),  
River Brent,  
Grand Union Canal,  
River Colne,  
River Misbourne,  
River Thames,  
Padbury Brook,  
River Great Ouse,  
River Cherwell,  
Oxford Canal,  
River Itchen,  
River Leam,  
River Avon,  
River Cole,  
River Tame,  
Trent and Mersey Canal,  
Wyrley and Essington Canal,  
Coventry Canal,  
River Blythe,  
Plants Brook,  
Dunlop Channel,  
River Rea,  
Digbeth Branch Canal, and  
Birmingham to Fazeley Canal.

- (2) The nominated undertaker may—
- (a) temporarily interfere with a waterway mentioned in sub-paragraph (1) at any point within the Act limits, by constructing or maintaining such temporary works, or by carrying out such dredging works, as it considers necessary or expedient;
  - (b) temporarily moor or anchor barges or other vessels or craft in a waterway mentioned in sub-paragraph (1);
  - (c) temporarily close a waterway mentioned in sub-paragraph (1), or a part of such a waterway, to navigation.
- (3) The power under sub-paragraph (2)(c) must be exercised in a way which secures—
- (a) that no more of the waterway is closed to navigation at any time than is necessary in the circumstances, and
  - (b) that, if complete closure of the waterway to navigation becomes necessary, all reasonable steps are taken to secure that the minimum obstruction, delay or interference is caused to vessels or craft which may be using or intending to use it.

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- (4) The nominated undertaker is not liable for any loss suffered, or costs or expenses incurred, by any person as a direct or indirect result of any interference in accordance with this paragraph with a public right of navigation.
- (5) The nominated undertaker must compensate any person who suffers loss as a result of any interference in accordance with this paragraph with a private right of navigation.
- (6) Any dispute as to a person's entitlement to compensation under sub-paragraph (5), or as to the amount of compensation, must be determined under and in accordance with Part 1 of the Land Compensation Act 1961.

*Electronic communications apparatus*

- 10 (1) The nominated undertaker may, in installing any electronic communications apparatus in exercise of the powers conferred by this Act—
  - (a) provide additional capacity for electronic communications apparatus belonging to any other person;
  - (b) construct any extension or other alteration of electronic communications apparatus in connection with providing such additional capacity.
- (2) In sub-paragraph (1), ““electronic communications apparatus”” —
  - (a) has the meaning given by paragraph 1(1) of Schedule 2 to the Telecommunications Act 1984, but
  - (b) excludes any radio mast.

*Level crossings*

- 11 (1) The nominated undertaker may construct Work No 2/39 so as to carry the railway comprised in that work on the level across the following footpaths—

<i>Area</i>	<i>Footpath to be crossed</i>	
County of Buckinghamshire, District of Aylesbury Vale, Parish of Stoke Mandeville	Footpath SMA/11/2, accommodation crossing	with
	Footpath SMA/16/2, accommodation crossing	with

- (2) In exercising the power under sub-paragraph (1), the nominated undertaker may alter the level of the footpaths specified in that sub-paragraph.
- (3) The nominated undertaker and the highway authority may enter into agreements concerning the construction and maintenance of any new level crossing (and such agreements may include provision about contributions towards the expenses of construction or maintenance).
- (4) In this paragraph, ““new level crossing”” means the place at which the railway mentioned in sub-paragraph (1) crosses a footpath specified in that sub-paragraph.



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## PART 2

### EXERCISE OF POWERS OF ENTRY ETC

- 12 (1) This paragraph applies where the nominated undertaker has a power to enter land under paragraph 1, 2(1), (4) or (6), 3(1), (5) or (7), 4(1), (6), (7) or (9) or 7(6).
- (2) The power is exercisable at any reasonable time.
- (3) Before entering the land, the nominated undertaker or any authorised person must, if so required—
- (a) produce evidence of authority to enter the land, and
  - (b) state the purpose of entry.
- (4) For the purposes of exercising the power, the nominated undertaker or any authorised person may (subject to paragraph 13)—
- (a) take vehicles and equipment on to the land, and
  - (b) take on to the land such other persons as may be necessary.
- (5) In this paragraph—
- “authorised person” means a person exercising the relevant power of entry on the nominated undertaker's behalf;
  - “equipment” includes plant and machinery.
- 13 (1) This paragraph applies where the nominated undertaker proposes to exercise a power of entry under paragraph 1, 2(1), (4) or (6), 3(1), (5) or (7) or 4(1), (6), (7) or (9) in relation to—
- (a) residential land, or
  - (b) a building not on residential land.
- (2) If it appears to a justice of the peace—
- (a) that the nominated undertaker is entitled to exercise the relevant power of entry in relation to the residential land or the building, and
  - (b) that admission to the land or building has been refused or a refusal is reasonably apprehended,
- the justice must issue a warrant authorising the nominated undertaker to exercise the power of entry in relation to the land or building.
- (3) For the purposes of sub-paragraph (2)(b), admission is refused if a request for admission is not granted within a reasonable period after being made.
- (4) Where a warrant has been issued in relation to land or a building under sub-paragraph (2), the nominated undertaker may not demand admission as of right to the land or building unless—
- (a) in a case where a period of notice otherwise applies in relation to the exercise of the power in question, the required notice has been given (whether before or after the issue of the warrant) to the owners and occupiers of the land or building, and
  - (b) in a case where no period of notice otherwise applies in relation to the exercise of the power in question, at least 24 hours' notice has been given (whether before or after the issue of the warrant) to the owners and occupiers of the land or building.

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- (5) Paragraph 12(4) (power to take vehicles, equipment and other persons on to land) applies to the exercise of a power of entry in reliance on a warrant issued under sub-paragraph 13(2).
- (6) In this paragraph, “residential land” means so much of any land as consists of—
- (a) a dwelling or part of a dwelling,
  - (b) a garden, yard, private garage or outbuilding which is used and enjoyed wholly or mainly with a dwelling, or
  - (c) in the case of a building which includes one or more dwellings, any part of the building which is used and enjoyed wholly or mainly with those dwellings or any of them.
- 14 (1) Where the nominated undertaker exercises any power under paragraphs 1 to 4, it must compensate the owners and occupiers of the building or land in relation to which the power is exercised for any loss which they may suffer by reason of the exercise of the power.
- (2) Any dispute as to a person's entitlement to compensation under sub-paragraph (1), or as to the amount of compensation, must be determined under and in accordance with Part 1 of the Land Compensation Act 1961.
- (3) Nothing in sub-paragraphs (1) and (2) affects liability to pay compensation under—
- (a) section 6 of the Railways Clauses Consolidation Act 1845, as incorporated into this Act,
  - (b) section 10(2) of the Compulsory Purchase Act 1965, as applied to the acquisition of land under section 4(1), or
  - (c) any other enactment,
- otherwise than for loss for which compensation is payable under sub-paragraph (1).
- (4) On application by a person who—
- (a) has incurred expenses in complying with a tree works notice under paragraph 7(2), or
  - (b) has suffered any loss or damage in consequence of the carrying out of works required by such a notice,
- the county court must order the nominated undertaker to pay the person such compensation in respect of the loss, damage or expenses as the court thinks fit.

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