

*Status: Point in time view as at 03/05/2023.*

*Changes to legislation: There are currently no known outstanding effects for the High Speed Rail (London - West Midlands) Act 2017, Part 2. (See end of Document for details)*

## SCHEDULES

### SCHEDULE 33

#### PROTECTIVE PROVISIONS

##### PART 2

###### ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

- 18 (1) The following provisions of this Part have effect, unless otherwise agreed in writing between the nominated undertaker, or the Secretary of State as the case may be, and the undertakers concerned.

- (2) In this Part—

““alternative apparatus”” means alternative apparatus adequate to enable the undertakers to fulfil their functions as effectively as is achievable using the apparatus which the alternative apparatus is to replace;

““apparatus”” means—

- (a) in the case of electricity undertakers, electric lines or electrical plant (as defined in the Electricity Act 1989) belonging to, or maintained by, such undertakers;
- (b) in the case of gas undertakers, mains, pipes or other apparatus belonging to, or maintained by, a gas transporter for the purposes of the conveyance or storage of gas;
- (c) in the case of water undertakers—
  - (i) mains, pipes or other apparatus belonging to, or maintained by, such undertakers for the purposes of water supply; and
  - (ii) any water mains or service pipes (or part of a water main or service pipe) that is the subject of an agreement to adopt made under section 51A of the Water Industry Act 1991;
- (d) in the case of sewerage undertakers—
  - (i) any sewer, drain or works vested in a sewerage undertaker under the Water Industry Act 1991 and includes a sludge main, disposal main (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or work; and
  - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act;

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

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“construction” includes execution, placing, altering, replacing, relaying and removal and, in its application to works which include or comprise any operation, means the carrying out of that operation;

“functions” includes powers and duties;

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

“plans” includes sections and method statements;

“removed” and “removal” in a context referring to the removal of apparatus includes the disconnection and abandonment of apparatus where the retention of decommissioned apparatus would not affect the construction and use of the works authorised by this Act;

“service obligations” means any service obligation imposed on the undertakers by or under the enactments authorising them to carry on their respective undertakings;

“undertakers” means any of the following, namely, a licence holder within the meaning of Part 1 of the Electricity Act 1989, a gas transporter within the meaning of Part 1 of the Gas Act 1986, a water undertaker within the meaning of the Water Industry Act 1991, a sewerage undertaker within Part 1 of that Act and any local authority which is a relevant authority for the purposes of section 97 of that Act; and, in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained.

- (3) Except in paragraphs 26(3) and 27, the provisions of this Part are not to apply to any apparatus in respect of which the relations between the nominated undertaker and the undertakers are regulated by the provisions of Part 3 of the New Roads and Street Works Act 1991.
- (4) The exercise of the powers under paragraphs 2 to 6 of Schedule 2 in relation to apparatus to which this Part applies is subject to paragraph 25 of this Part, and paragraphs 28 and 29 of this Part apply instead of paragraph 14 of Schedule 2 in relation to the exercise of those powers.
- 19 (1) The following provisions of this paragraph have effect in any case where the Secretary of State or the nominated undertaker, in exercise of the powers of this Act, acquires any interest in or temporarily occupies any land in which apparatus is placed.
- (2) Unless a certificate is issued by the appropriate Ministers under sub-paragraph (3) the apparatus must not be removed under this Part, and any right of the undertakers to maintain, repair, renew, adjust, alter or inspect the apparatus in that land is not to be extinguished until any necessary alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertakers.
- (3) Where the appropriate Ministers certify in relation to any apparatus that—
- (a) failure to remove the apparatus would cause undue delay to the construction of the scheduled works, and
  - (b) the removal of the apparatus before the provision of alternative apparatus in accordance with this paragraph would not substantially prejudice the ability of the undertakers to meet any relevant service obligations,
- that apparatus may be removed (or required by the nominated undertaker to be removed) under this Part before any necessary alternative apparatus has been constructed or is in operation to the reasonable satisfaction of the undertakers.

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- (4) In this paragraph ““appropriate Ministers”” means the Secretary of State for Transport acting jointly with either the Secretary of State for Environment, Food and Rural Affairs or <sup>[F1]</sup>the Secretary of State for Energy Security and Net Zero].

#### Textual Amendments

- F1** Words in Sch. 33 para. 19(4) substituted (3.5.2023) by The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions (National Security and Investment Act 2021 etc) Order 2023 (S.I. 2023/424), art. 1(2), **Sch. para. 19(3)(a)** (with art. 17)

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

- C1** Sch. 33 para. 19: functions transferred (3.5.2023) by The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions (National Security and Investment Act 2021 etc) Order 2023 (S.I. 2023/424), arts. 1(2), **7(5)** (with art. 17)

- 20 (1) This paragraph applies where—
- (a) the nominated undertaker for the purpose of constructing any work authorised by this Act in, on or under any land, requires the removal of any apparatus placed in that land, and gives the undertakers not less than 28 days' written notice of that requirement, together with a plan of the proposed work, and of the proposed position of the alternative apparatus to be provided or constructed, or
  - (b) in consequence of the exercise of any of the powers of this Act, the undertakers reasonably require to remove any apparatus.
- (2) Where it is reasonably practicable to do so, the nominated undertaker or the Secretary of State must afford the undertakers the requisite facilities and rights for the construction of any necessary alternative apparatus in other land which is available for the purpose and which is held or used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act or held by the Secretary of State, or in which either of them has sufficient rights or interests and subsequently for the maintenance, repair, renewal and inspection of such apparatus.
- (3) Sub-paragraph (4) applies where facilities and rights required for the construction of apparatus under sub-paragraph (2) are to be afforded elsewhere than in such other land and neither the nominated undertaker nor the Secretary of State is able to afford such facilities and rights.
- (4) The undertakers must, on receipt of a written notice from the nominated undertaker that this sub-paragraph applies, as soon as reasonably possible use their best endeavours to obtain the necessary facilities and rights; and neither the nominated undertaker nor the Secretary of State is obliged to provide such facilities and rights in the other land.
- 21 (1) Any alternative apparatus to be constructed by the undertakers in pursuance of paragraph 20 in land held or used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act or held by the Secretary of State, or in which the undertakers have obtained the necessary facilities and rights, must be constructed in such manner, and in such line or situation and in accordance with such programme, as is—

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- (a) agreed between the undertakers and the nominated undertaker with a view to securing, among other things, the efficient implementation of the necessary work, the avoidance of unnecessary delay and the continued fulfilment by the undertakers of their service obligations to a standard no less than that achieved prior to the removal of the apparatus which the alternative apparatus replaces, or
    - (b) in default of agreement, determined in accordance with paragraph 31.
  - (2) If the undertakers fail to comply with an agreement made under sub-paragraph (1), or with a determination under paragraph 31, they must compensate the nominated undertaker in respect of any loss or damage directly resulting from the failure, other than loss or damage arising from matters outside the reasonable control of the undertakers or loss of, or arising from delayed receipt of, operating revenue due to delayed opening of Phase One of High Speed 2.
- 22 (1) This paragraph applies where—
- (a) the manner of construction and the line and situation of any necessary alternative apparatus have been agreed or determined as provided under paragraph 21, and
  - (b) any such facilities and rights as are referred to in paragraph 20 have been granted to or obtained by the undertakers, or an undertaking has been given that such facilities or rights will be granted.
- (2) The undertakers must proceed with all reasonable despatch to—
- (a) construct and bring into operation the alternative apparatus, and
  - (b) remove any apparatus required by the nominated undertaker to be removed under the provisions of this Part.
- (3) If the undertakers fail to comply with sub-paragraph (2)(b), the nominated undertaker may remove the apparatus.
- (4) Following the removal of apparatus under the provisions of this Part, or its abandonment, any rights of the undertakers relating to that apparatus in or over the land in which it was or is situated are extinguished and all responsibility of the undertakers for any apparatus which is abandoned is to cease.
- 23 (1) This paragraph applies where the nominated undertaker gives notice to the undertakers that it desires to carry out any part of so much of the work necessary in connection with the construction of the alternative apparatus, or the removal of the apparatus required to be removed, as is or will be situated in any lands—
- (a) held or used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act, or
  - (b) held by the Secretary of State.
- (2) Such work, instead of being carried out by the undertakers, must be carried out by the nominated undertaker—
- (a) in accordance with plans and specifications and in a position agreed between the undertakers and the nominated undertaker, or, in default of agreement, determined in accordance with paragraph 31, and
  - (b) with all reasonable despatch under the superintendence (if given) and to the reasonable satisfaction of the undertakers.
- (3) Nothing in this paragraph authorises the nominated undertaker to carry out any connection to or disconnection of any existing apparatus or to carry out any works

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associated with a connection or disconnection within 600 millimetres of the point of connection or disconnection.

- 24 (1) This paragraph applies where, in accordance with the provisions of this Part, the nominated undertaker or the Secretary of State affords to the undertakers facilities and rights for the construction, maintenance, repair, renewal and inspection of alternative apparatus on land—
- (a) held or used, or intended for use, by the nominated undertaker for the purposes of its undertaking under this Act, or
  - (b) held by the Secretary of State.
- (2) Those facilities and rights must be granted upon such terms and conditions as may be—
- (a) agreed between the nominated undertaker or, as the case may be, the Secretary of State, and the undertakers, or
  - (b) in default of agreement, determined in accordance with paragraph 31.
- (3) In determining such terms and conditions in respect of alternative apparatus, a person making a determination under paragraph 31 must have regard to any template provisions issued by the appropriate Ministers and determined in accordance with sub-paragraph (4); and must—
- (a) give effect to all reasonable requirements of the nominated undertaker for ensuring the safety and efficient operation of the works authorised by this Act and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of the nominated undertaker or the use of the same, and
  - (b) have regard to the undertakers' ability to fulfil their service obligations.
- (4) For the purposes of determining the matters under sub-paragraph (3) the appropriate Ministers must consult the undertakers to which paragraph 24 may apply on the form of the proposed template provisions, and any objections to the form of those provisions which have not been resolved within six months after this Act comes into force must be referred to an independent person acting as an expert appointed to make a final determination as to the form of the template provisions.
- (5) The independent person making a determination under sub-paragraph (4) is to be appointed by the President of the Royal Institution of Chartered Surveyors and in making that determination that person must have regard to the matters specified in sub-paragraph (3)(a) and (b).
- (6) If the facilities and rights to be afforded by the nominated undertaker or the Secretary of State in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are more or less favourable on the whole to the undertakers than the facilities, rights, terms and conditions applying to the apparatus to be removed, compensation must be paid to or by the nominated undertaker or the Secretary of State to or by the undertakers in respect of the difference as is reasonable having regard to all the circumstances of the case.
- (7) In this paragraph “the appropriate Ministers” means the Secretary of State for Transport acting jointly with the Secretary of State for Environment, Food and Rural Affairs and <sup>F2</sup>the Secretary of State for Energy Security and Net Zero].

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### Textual Amendments

- F2** Words in Sch. 33 para. 24(7) substituted (3.5.2023) by [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), art. 1(2), **Sch. para. 19(3)(b)** (with art. 17)

### Modifications etc. (not altering text)

- C2** Sch. 33 para. 24: functions transferred (3.5.2023) by [The Secretaries of State for Energy Security and Net Zero, for Science, Innovation and Technology, for Business and Trade, and for Culture, Media and Sport and the Transfer of Functions \(National Security and Investment Act 2021 etc\) Order 2023 \(S.I. 2023/424\)](#), arts. 1(2), **7(5)** (with art. 17)

- 25 (1) Not less than 28 days before commencing to construct any work authorised by this Act which is near to, or will or may affect, any apparatus the removal of which has not been required by the nominated undertaker under paragraph 20, the nominated undertaker must submit to the undertakers a plan and description of the work and of any protective measures which the nominated undertaker proposes to take in respect of that apparatus, together with a specification of such measures where appropriate.
- (2) The work must be constructed only in accordance with the plan and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made by the undertakers for the alteration or otherwise for the protection of the apparatus or for securing access to the apparatus, and the undertakers are to be entitled by their officer to watch and inspect the construction of the work.
- (3) If the undertakers within 14 days after the submission to them of any such plan and description, in consequence of the works proposed by the nominated undertaker, reasonably require the removal of any apparatus and give written notice to the nominated undertaker of that requirement, this Part has effect as if the removal of such apparatus had been required by the nominated undertaker under paragraph 20.
- (4) Nothing in sub-paragraphs (1) to (3) precludes the nominated undertaker from submitting at any time, or from time to time, but in no case less than 28 days before commencing the construction of the work, a new plan and description of it in lieu of the plan and description previously submitted, and having done so the provisions of those sub-paragraphs apply to and in respect of the new plan and description.
- (5) The nominated undertaker is not required to comply with sub-paragraphs (1) to (3) in a case of emergency but in such a case it must give notice to the undertakers as soon as reasonably practicable and a plan and description of those works as soon as reasonably practicable subsequently, and must comply with those sub-paragraphs so far as reasonably practicable in the circumstances.
- 26 (1) If in consequence of the exercise of the powers of this Act the access to any apparatus is materially obstructed the nominated undertaker must, so far as reasonably practicable, provide alternative means of access to such apparatus which is no less convenient than the access enjoyed by the undertakers prior to the obstruction.
- (2) The nominated undertaker must, so far as is reasonably practicable, so exercise its powers under paragraphs 2 to 6 of Schedule 2 as not to obstruct or render less convenient the access to any apparatus.

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- (3) Notwithstanding the temporary stopping up or diversion of any highway under paragraph 6 of Schedule 4, the undertakers may do all such works and things in any such highway as may be reasonably necessary to enable them to inspect, repair, maintain, renew, remove or use any apparatus which at the time of the stopping up or diversion was in that highway.
- 27 Where, in consequence of this Act, any part of any highway in which any apparatus is situate ceases to be part of a highway, the undertakers may exercise the same rights of access to such apparatus as they enjoyed immediately before the passing of this Act, but nothing in this paragraph is to affect any right of the nominated undertaker or of the undertakers to require removal of that apparatus under this Part or the power of the nominated undertaker to construct works in accordance with paragraph 25.
- 28 (1) Subject to the following provisions of this paragraph, the nominated undertaker must repay to the undertakers the reasonable expenses incurred by the undertakers in, or in connection with—
- (a) the removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Part,
  - (b) the cutting off of any apparatus from any other apparatus in consequence of the exercise by the nominated undertaker of any power under this Act, and
  - (c) any other work or thing rendered reasonably necessary in consequence of the exercise by the nominated undertaker of any such power.
- (2) The value of any apparatus removed under the provisions of this Part is to be deducted from any sum payable under sub-paragraph (1), that value being calculated after removal.
- (3) Sub-paragraph (4) applies where, in pursuance of the provisions of this Part—
- (a) alternative apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type, or
  - (b) apparatus (whether existing apparatus or alternative apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated.
- (4) If the placing of apparatus of that type or capacity or of those dimensions, or the placing of apparatus at that depth, as the case may be, is not agreed by the nominated undertaker or, in default of agreement, is not determined to be necessary in accordance with paragraph 31, then, if it involves cost in the construction of works under paragraph 23 exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to the undertakers by virtue of sub-paragraph (1) is to be reduced by the amount of that excess
- (5) For the purposes of sub-paragraphs (3) and (4)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by the existing apparatus, and

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- (b) where the provision of a joint in a cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.
- (6) An amount which apart from this sub-paragraph would be payable to the undertakers in respect of works by virtue of this paragraph must, if the works include the placing of apparatus provided in substitution for apparatus placed more than seven and a half years earlier so as to confer on the undertakers any financial benefit by deferment of the time for renewal of the apparatus or of the system of which it forms part in the ordinary course, be reduced by the amount which represents that benefit.
- (7) In any case where work is carried out by the nominated undertaker pursuant to paragraph 23 and, if such work had been carried out by the undertakers, the repayment made to the undertakers under this paragraph would fall to be reduced pursuant to sub-paragraphs (3) to (6), the undertakers must pay to the nominated undertaker such sum as represents the amount of that reduction.
- 29 (1) This paragraph applies where, by reason of the construction of any of the works authorised by this Act, or any subsidence resulting from any of those works, any damage is caused to any 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 the undertakers, or there is any interruption in any service provided by any of the undertakers
- (2) Subject to sub-paragraphs (3) and (4), the nominated undertaker must—
- (a) bear and pay the cost reasonably incurred by the undertakers in making good such damage or restoring the supply
  - (b) make reasonable compensation to the undertakers for loss sustained by them by reason of any such damage or interruption, and
  - (c) indemnify the undertakers against claims, demands, proceedings, and damages which may be made or taken against, or recovered from the undertakers by reason of any such damage or interruption.
- (3) Nothing in sub-paragraph (2) is to impose any liability on the nominated undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of the undertakers, their officers, servants, contractors or agents.
- (4) The undertakers must give the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand must be made without the consent of the nominated undertaker which, if it withholds such consent, must have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- 30 In any case where Network Rail Infrastructure Limited (“Network Rail”) is the nominated undertaker the provisions of this Part have effect subject to any existing agreement between Network Rail and an undertaker relating to apparatus laid or erected on land belonging to Network Rail.
- 31 (1) Any dispute arising between the nominated undertaker and the undertakers under this Part is to be determined by arbitration if—
- (a) the parties agree, or
  - (b) the dispute relates to the amount of any sum payable under this Part,
- but otherwise is to be determined by a person appointed by the appropriate Ministers.



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- (2) Any person appointed by the appropriate Ministers under sub-paragraph (1) must, in determining any dispute arising under this Part, have regard to such matters as may be specified by the appropriate Ministers on making the appointment.
- (3) The costs and fees of the person determining the dispute and the costs of the parties to the dispute are to be allocated between the parties as that person may direct.
- (4) In this paragraph “the appropriate Ministers” means the Secretary of State for Transport acting jointly with either the Secretary of State for Environment, Food and Rural Affairs or the Secretary of State for Energy and Climate Change.

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