

## SCHEDULE 10

### Protective provisions

## PART 19

### For the protection of drainage authorities

**242.** The provisions of this Part of this Schedule apply for the protection of the drainage authority unless otherwise agreed between the undertaker and the drainage authority.

**243.** In this Part of this Schedule—

“construction” includes execution, placing, altering, laying, replacing, relaying, connecting, building, installing, removal and excavation, and “construct” and “constructed” are to be construed accordingly;

“the drainage authority” means—

- (a) the drainage board concerned within the meaning of section 23(a) (prohibition on obstructions etc. in watercourses) of the Land Drainage Act 1991; or
- (b) in the case of any area for which there is no such drainage board, the lead local flood authority within the meaning of section 6 (other definitions) of the Flood and Water Management Act 2010(b);

“drainage work” means any ordinary watercourse and includes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage or flood defence in connection with an ordinary watercourse which is the responsibility of the drainage authority;

“ordinary watercourse” has the same meaning as given in section 72 (interpretation) of the Land Drainage Act 1991(a);

“plans” includes sections, drawings, specifications and method statements; and

“specified work” means works carried out in relation to or which may alter or obstruct any ordinary watercourse including by—

- (c) erecting any mill dam, weir or other similar obstruction to the flow of the watercourse, or raising or otherwise altering any such obstruction;
- (d) construction or installation of a bridge or other crossing structure;
- (e) installing a culvert in the watercourse; or
- (f) altering a watercourse or a culvert or other form of drainage infrastructure in a manner that would be likely to affect the flow of the watercourse.

**244.—**(1) Before beginning to construct any specified work, the undertaker must submit to the drainage authority plans of the work, and such further particulars as the drainage authority may within 14 days of the first submission of the plans reasonably require.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the drainage authority, or determined under paragraph 250.

(3) The drainage authority must approve or refuse approval of the plans for a specified work within 56 days of receipt of the later of—

- (a) the plans under sub-paragraph (1); or
- (b) such further particulars as the drainage authority may reasonably require under sub-paragraph (1).

(4) Any approval of the drainage authority required under this paragraph—

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (a) must not be unreasonably withheld or delayed;
- (b) is to be deemed to have been given if it is neither given nor refused within the period specified in sub-paragraph (3); and
- (c) may be given subject to such reasonable requirements or conditions as the drainage authority may make for the protection of any ordinary watercourse or for the prevention of flooding.

**245.** The requirements or conditions which the drainage authority may make under paragraph 244 include conditions requiring the undertaker at its own expense to construct such protective works (including any new works as well as alterations to existing works) as are reasonably necessary—

- (a) to safeguard any ordinary watercourse against damage, or
- (b) to secure that the efficiency of any ordinary watercourse for flood defence or land drainage purposes is not impaired and that the risk of flooding is not otherwise increased, by reason of the specified work in relation to the ordinary watercourse.

**246.—(1)** Any specified work in relation to an ordinary watercourse, and all protective works required by the drainage authority under paragraph 244, must be constructed to the reasonable satisfaction of the drainage authority and an officer of the drainage authority is entitled, on giving such notice as may be reasonable in the circumstances, to inspect and watch the construction of such works.

(2) The undertaker must give to the drainage authority not less than 14 days' notice of its intention to commence construction of any specified work and the undertaker must give to the drainage authority notice of completion of a specified work not later than 7 days after the date on which it is brought into use.

(3) If any part of a specified work in, over or under any ordinary watercourse is constructed otherwise than in accordance with the requirements of this Part of this Schedule or as agreed between the undertaker and the drainage authority, the drainage authority may by notice require the undertaker at its own expense to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld) at the undertaker's expense to remove, alter or pull down the work and, where removal is agreed, to restore the site to its former condition to such extent and within such limits as the drainage authority reasonably requires.

(4) Subject to sub-paragraph (5), if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (3) is served upon the undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress toward their implementation, the drainage authority may execute the works specified in the notice, subject to the undertaker having the right to supervise the planning and execution of such works to the extent they may affect the pipeline to the extent that those works are compliant with and do not compromise the undertaker's ability to comply with the Pipeline Safety Regulations 1996, and any expenditure reasonably incurred by it in so doing is to be recoverable from the undertaker. Notwithstanding the foregoing, the drainage authority may not under any circumstances undertake any works to the pipeline itself which could or would conflict with the duties and obligations of the undertaker under the Pipeline Safety Regulations 1996, any direction issued by the Health and Safety Executive under those Regulations or any other health and safety legislation relating to the operation and maintenance of the pipeline.

(5) In the event of any dispute as to whether sub-paragraph (3) is properly applicable to any work in respect of which notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the drainage authority must not, except in an emergency, exercise the powers conferred by sub-paragraph (4) until the dispute has been finally determined.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

**247.**—(1) From the commencement of the construction of any specified work until the date falling 12 months from the date of completion of the specified work (“the maintenance period”), the undertaker must at its expense, maintain in at least as good repair and condition immediately prior to commencement of the construction of the specified work and keep free from obstruction any part of a drainage work which is situated within land held or occupied by the undertaker in respect of the specified work, whether the drainage work is constructed under this Order or is already in existence.

(2) If any such drainage work which the undertaker is liable to maintain during the maintenance period is not maintained to the reasonable satisfaction of the drainage authority, it may by notice require the undertaker to maintain the drainage work at the undertaker’s expense, or any part of it, to such extent as the drainage authority reasonably requires.

(3) If, within a reasonable period being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the reasonable requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the drainage authority may do what is necessary for such compliance, subject to the undertaker having the right to supervise the planning and execution of such works to the extent they may affect the pipeline to the extent that those works are compliant with and do not compromise the undertaker’s ability to comply with the Pipeline Safety Regulations 1996, and may recover any expenditure reasonably incurred by it in doing so from the undertaker. Notwithstanding the foregoing, the drainage authority may not under any circumstances undertake any works to the pipeline itself which could or would conflict with the duties and obligations of the undertaker under the Pipeline Safety Regulations 1996, any direction issued by the Health and Safety Executive under those Regulations or any other health and safety legislation relating to the operation and maintenance of the pipeline.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the drainage authority must not, except in a case of emergency, exercise the powers of sub-paragraph (3) until the dispute has been finally determined.

(5) This paragraph does not apply to—

- (a) drainage works which are vested in the drainage authority, or which the drainage authority or another person is liable to maintain and is not prevented by this Order from so doing; and
- (b) any obstruction of a drainage work for the purpose of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule provided that any obstruction is removed as soon as reasonably practicable.

**248.** Subject to paragraph 247(5)(b), if by reason of the construction of any specified work or of the failure of any such work the efficiency of any ordinary watercourse for flood defence or land drainage purposes is impaired, or that watercourse is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the undertaker at its own expense to the reasonable satisfaction of the drainage authority and if the undertaker fails to do so, the drainage authority may make good the same and recover the expense reasonably incurred by it in so doing from the undertaker.

**249.**—(1) The undertaker must make reasonable compensation to the drainage authority for costs, charges and expenses which it may reasonably incur or which it may sustain—

- (a) in the examination or approval of plans under this Part of this Schedule; and
- (b) in the inspection and supervision of the construction of a specified work in respect of an ordinary watercourse or any protective works required by the drainage authority under this Part of this Schedule.

**250.** Any dispute arising between the undertaker and the drainage authority under this Part of this Schedule is to be determined by arbitration in accordance with article 47 (arbitration) of the Order.