
Changes to legislation: There are currently no known outstanding effects for the High Speed Rail (London - West Midlands) Act 2017, SCHEDULE 33. (See end of Document for details)

SCHEDULES

SCHEDULE 33

Section 48

PROTECTIVE PROVISIONS

PART 1

HIGHWAYS AND TRAFFIC

- 1 (1) The following provisions of this Part have effect, unless otherwise agreed in writing between the nominated undertaker and the highway authority concerned.
- (2) In this Part—
 - “plans” includes sections and specifications;
 - “property of the highway authority” means any apparatus of the highway authority affixed to or placed under any highway.
- (3) Part 3 of the New Roads and Street Works Act 1991 does not apply in relation to any matter which is regulated by this Part.
- 2 Wherever in this Part provision is made with respect to the approval or consent of the highway authority, that approval or consent must be in writing and subject to such reasonable terms and conditions as the highway authority may require, but must not be unreasonably withheld.
- 3 In exercising the powers conferred by this Act in relation to any highway the nominated undertaker must—
 - (a) have regard to the potential disruption of traffic which may be caused, and
 - (b) seek to minimise such disruption so far as is reasonably practicable.
- 4 (1) This paragraph applies to the construction of any tunnel, subway or other structure authorised by this Act under and within 8 metres of the surface of any highway which comprises a carriageway.
- (2) The nominated undertaker must not, without the consent of the highway authority, carry out works to which this paragraph applies except in accordance with plans submitted to, and approved by, the highway authority.
- (3) If, within 28 days after such plans have been submitted, the highway authority has not approved or disapproved them, it is deemed to have approved the plans as submitted.
- (4) This paragraph does not apply to street works within the meaning of Part 3 of the New Roads and Street Works Act 1991.
- 5 In the construction of any part of the works to which paragraph 4 applies under a highway no part of it may, except with the consent of the highway authority, be so constructed as to—
 - (a) interfere with the provision of proper means of drainage of the surface of the highway, or

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- (b) be nearer than two metres to the surface of the highway.
- 6 (1) The provisions of this paragraph have effect in relation to, and in relation to the construction of, any new bridge, or any extension or alteration of an existing bridge, which carries—
- (a) any part of the works authorised by this Act over a highway, or
 - (b) a highway over any part of those works.
- Any such new bridge, or (as the case may be) any bridge so extended or altered, is referred to in this paragraph as “the bridge”.
- (2) Before commencing the construction of, or the carrying out of any work in connection with, the bridge which involves interference with a highway, the nominated undertaker must submit to the highway authority for its approval plans, drawings and particulars (in this paragraph referred to as “plans”) relating to the work, and the bridge must not be constructed and the works must not be carried out except in accordance with the plans submitted to, and approved by, the highway authority.
- (3) If, within 28 days after the plans have been submitted, the highway authority has not approved or disapproved them, it is to be deemed to have approved the plans as submitted.
- (4) If the bridge carries any part of the works authorised by this Act over any highway—
- (a) it must be constructed in such manner as to prevent so far as may be reasonably practicable the dripping of water from the bridge, and
 - (b) the highway authority may, at the cost of the nominated undertaker, provide and place such lamps and apparatus as may from time to time be reasonably necessary for efficiently lighting any highway under or in the vicinity of the bridge.
- 7 The nominated undertaker must—
- (a) secure that so much of the works authorised by this Act as is constructed under any highway must be so designed, constructed and maintained as to carry the appropriate loading recommended for highway bridges by the Secretary of State at the time of construction of the works, and
 - (b) indemnify the highway authority against, and make good to the highway authority, the expenses which the highway authority may reasonably incur in the maintenance or repair of any highway, or any tunnels, sewers, drains or apparatus in the highway, by reason of non-compliance with the provisions of this paragraph.
- 8 (1) Any officer of the highway authority duly appointed for the purpose may at all reasonable times, on giving to the nominated undertaker such notice as may in the circumstances be reasonable, enter upon and inspect any part of the works authorised by this Act which—
- (a) is in, over or under any highway, or
 - (b) which may affect any highway or any property of the highway authority, during the carrying out of the works.
- (2) The nominated undertaker must give to such officer all reasonable facilities for such inspection and, if the officer is of the opinion that the construction of the work is attended with danger to any highway or to any property of the highway authority on or under any highway, the nominated undertaker must adopt such measures and

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- precautions as may be reasonably practicable for the purpose of preventing any damage or injury to the highway.
- 9 (1) The nominated undertaker must not alter, disturb or in any way interfere with any property of the highway authority on or under any highway, or the access to that property, without the consent of the highway authority.
- (2) Any alteration, diversion, replacement or reconstruction of any such property which may be necessary must be made by the highway authority or the nominated undertaker as the highway authority thinks fit, and the expense reasonably incurred by the highway authority in so doing must be repaid to the highway authority by the nominated undertaker.
- (3) If, within 28 days after a request for consent has been submitted, the highway authority has not given or refused such consent, it is to be deemed to have consented to the request as submitted.
- 10 The nominated undertaker must not remove any soil or material from any highway except so much as is excavated in the carrying out of the works authorised by this Act.
- 11 (1) If the highway authority, after giving to the nominated undertaker not less than 28 days' notice (or, in case of emergency, such notice as is reasonably practicable) of its intention to do so, incurs any additional expense in consequence of the construction of the works authorised by this Act—
- (a) in the signposting of traffic diversions,
 - (b) in the taking of other measures in relation to those diversions, or
 - (c) in the repair of any highway by reason of the diversion of traffic from a road of a higher standard,
- the nominated undertaker must repay to the highway authority the amount of any such expense reasonably so incurred.
- (2) Sub-paragraph (3) applies in respect of an amount which, but for that sub-paragraph, would be payable to the highway authority by virtue of sub-paragraph (1) in respect of the repair of any highway.
- (3) If the highway fell or would have fallen due for repair as part of the maintenance programme of the highway authority at any time within ten years of the repair being carried out by the nominated undertaker, so as to confer on the highway authority financial benefit (whether by securing the completion of overdue maintenance work for which the highway authority is liable or by deferment of the time for such work in the ordinary course), the amount payable to the highway authority must be reduced by the amount which represents that benefit.
- 12 The nominated undertaker must not, except with the consent of the highway authority—
- (a) deposit any soil or material, or store any plant, in or over a highway to which the public continues to have access so as to obstruct or render less safe the use of the highway,
 - (b) deposit any soils or materials on any such highway outside a hoarding,
 - (c) erect or retain on or over such a highway any scaffolding or other structure which obstructs the highway unless the structure comprises screening which has been approved under Schedule 17 (planning conditions),
- but if within 28 days after request for it any such consent is neither given nor refused it is to be deemed to have been given.

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- 13 The nominated undertaker must, if reasonably so required by the highway authority, provide and maintain to the reasonable satisfaction of the highway authority, during such time as the nominated undertaker may occupy any part of a highway for the purpose of the construction of any part of the works authorised by this Act, temporary bridges and temporary ramps for vehicular or pedestrian traffic over any part of the works or in such other position as may be necessary to prevent undue interference with the flow of traffic in the highway.
- 14 (1) Where any part of any highway has been broken up or disturbed by the nominated undertaker and not permanently stopped up or diverted, the nominated undertaker must—
- (a) make good the subsoil, foundations and surface of that part of the highway to the reasonable satisfaction of the highway authority, and
 - (b) maintain the same to the reasonable satisfaction of the highway authority for such time as may reasonably be required for the permanent reinstatement of the highway.
- (2) The reinstatement of that part of the highway must be carried out by the nominated undertaker to the reasonable satisfaction of the highway authority in accordance with such requirements as to specification of material and standards of workmanship as may be prescribed for equivalent reinstatement work by regulations made under section 71 of the New Roads and Street Works Act 1991.
- 15 (1) This paragraph applies where damage to any highway or property of the highway authority on or under any highway is caused by, or results from—
- (a) the construction of any work authorised by this Act, or
 - (b) any act or omission of the nominated undertaker, its contractors, agents or employees whilst engaged upon such work.
- (2) In the case of damage to a highway, the nominated undertaker may make good such damage to the reasonable satisfaction of the highway authority.
- (3) The nominated undertaker must pay compensation to the highway authority—
- (a) in a case where the nominated undertaker does not make good such damage to a highway;
 - (b) in the case of damage to property of the highway authority.
- 16 The fact that any act or thing may have been done in accordance with plans approved by the highway authority must not (if it was not attributable to the act, neglect or default of the highway authority or of any person in its employ or its contractors or agents) exonerate the nominated undertaker from any liability, or affect any claim for damages, under this Part or otherwise.
- 17 (1) Any dispute arising between the nominated undertaker and the highway authority 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 must otherwise be determined by a person appointed by the Secretary of State.
- (2) Any person appointed by the Secretary of State under sub-paragraph (1) must, in determining any dispute arising under this Part, have regard to such matters as may be specified by the Secretary of State on making the appointment.

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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;

““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;

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“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.
- (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 ^{F1}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)

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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—
- (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

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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 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—

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- (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 ^{F2}the Secretary of State for Energy Security and Net Zero].

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)

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- 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.
- (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.

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- 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
 - (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

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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.
- (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.

Changes to legislation: There are currently no known outstanding effects for the High Speed Rail (London - West Midlands) Act 2017, SCHEDULE 33. (See end of Document for details)

PART 3

ELECTRONIC COMMUNICATIONS CODE NETWORKS

Modifications etc. (not altering text)

- C3** Sch. 33 Pt. 3: 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), **9(5)** (with art. 17)

- 32 (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 an operator of an electronic communications code network.

- (2) In this Part—

““alternative apparatus”” means apparatus provided in replacement of electronic communications apparatus in connection with the construction of the authorised works;

““the appropriate Ministers”” means the Secretary of State for Transport and [^{F3}the Secretary of State for Science, Innovation and Technology] acting jointly;

““the authorised works”” means the works authorised by this Act;

““construction”” includes installation (and ““construct”” is to be construed accordingly);

““electronic communications code”” means the electronic communications code contained in [^{F4}Schedule 3A to the Communications Act 2003];

““operator””, ““electronic communications apparatus””, and ““electronic communications code network”” have the meanings given by paragraph 1(1) of Schedule 17 to the Communications Act 2003.

Textual Amendments

- F3** Words in Sch. 33 para. 32(2) 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)(c)** (with art. 17)

- F4** Words in Sch. 33 para. 32(2) substituted (coming into force in accordance with of the amending S.I.) by The Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017 (S.I. 2017/1285), reg. 1(1), **Sch. 1 para. 13(2)(a)**

- 33 (1) Subject to sub-paragraph (2), [^{F5}Part 10] of the electronic communications code applies for the purposes of the authorised works.

- (2) [^{F6}Parts 6 and 10] of the electronic communications code do not apply for the purposes of the authorised works—

- (a) insofar as such works are regulated by the New Roads and Street Works Act 1991 or any regulation made under that Act,

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- (b) where the nominated undertaker exercises a right under subsection (4)(b) of section 272 of the Town and Country Planning Act 1990 or under an order made under that section to remove electronic communications apparatus, or
- (c) in respect of any matter regulated by sub-paragraphs (3) to (8) of paragraph 35.

Textual Amendments

- F5** Words in Sch. 33 para. 33(1) substituted (coming into force in accordance with of the amending S.I.) by The Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017 (S.I. 2017/1285), reg. 1(1), **Sch. 1 para. 13(2)(b)(i)**
- F6** Words in Sch. 33 para. 33(2) substituted (coming into force in accordance with of the amending S.I.) by The Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017 (S.I. 2017/1285), reg. 1(1), **Sch. 1 para. 13(2)(b)(ii)**

- 34 The temporary stopping up or diversion of any highway under paragraph 6 of Schedule 4 does not affect any right of an operator under [^{F7}Part 8] of the electronic communications code in respect of any apparatus which at the time of the stopping up or diversion is in the highway.

Textual Amendments

- F7** Words in Sch. 33 para. 34 substituted (coming into force in accordance with of the amending S.I.) by The Communications Act 2003 and the Digital Economy Act 2017 (Consequential Amendments to Primary Legislation) Regulations 2017 (S.I. 2017/1285), reg. 1(1), **Sch. 1 para. 13(2)(c)**

- 35 (1) Where a highway is stopped up under paragraph 2 or 3 of Schedule 4, any operator of an electronic communications code network whose electronic communications apparatus is under, over, in, on, along or across that highway may exercise the same rights of access in order to inspect, maintain, adjust, repair or alter that apparatus as if this Act had not been passed, but this is subject to sub-paragraph (2).
- (2) Nothing in sub-paragraph (1) affects any right of the nominated undertaker or the operator to require removal of that apparatus under this Part or the power of the nominated undertaker to alter or remove apparatus in accordance with paragraph 23 of the electronic communications code.
- (3) The nominated undertaker must give not less than 28 days' notice of its intention to stop up any highway under paragraph 2 or 3 of Schedule 4 to any operator of an electronic communications code network whose apparatus is under, over, in, on, along or across the highway.
- (4) Where a notice under sub-paragraph (3) has been given, the operator, if it reasonably considers that it is necessary for the safe and efficient operation and maintenance of the apparatus, may, and if reasonably requested so to do by the nominated undertaker in the notice, must, as soon as reasonably practicable after the service of the notice—
- (a) remove the apparatus and place it or other apparatus provided in substitution for it in such other position as the operator may reasonably determine and have power to place it, or
 - (b) provide other apparatus in substitution for the existing apparatus and place it in such other position as described in paragraph (a).

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- (5) Subject to the following provisions of this paragraph the nominated undertaker must pay to any operator of an electronic communications code network an amount equal to the cost reasonably incurred by the operator in or in connection with—
- (a) the execution of relocation works required in consequence of the stopping up of the highway, and
 - (b) the doing of any other work or thing rendered necessary by the execution of relocation works.
- (6) Sub-paragraph (7) applies where—
- (a) in the course of the execution of relocation works under sub-paragraph (4)—
 - (i) apparatus of better type, greater capacity or greater dimensions is placed in substitution for existing apparatus of worse type, smaller capacity or smaller dimensions, except where this has been solely due to using the nearest currently available type, capacity or dimension, or
 - (ii) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which existing apparatus was, and
 - (b) 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 consequence of the construction of the authorised works in order to ensure the continued efficient operation of the electronic communications code network of the operator.
- (7) If the execution of the relocation works involves cost 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 paragraph would be payable to the operator by virtue of sub-paragraph (5) is to be reduced by the amount of that excess.
- (8) For the purposes of sub-paragraphs (6) and (7)—
- (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 provides more than an equivalent service, and
 - (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 (in either case of such type, capacity and dimensions as is reasonably appropriate) is to be treated as if it also had been agreed or had been so determined.
- (9) The amount which apart from this sub-paragraph would be payable to an operator in respect of works by virtue of sub-paragraph (5) (and having regard, where it applies, to sub-paragraph (7)) 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 operator any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount which represents that benefit.
- (10) Sub-paragraphs (5) to (9) do not apply where the authorised works constitute major transport works or major highway works for the purpose of Part 3 of the New Roads

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and Street Works Act 1991 (including that provision as applied by paragraph 8 of Schedule 4 to this Act), but instead—

- (a) the allowable costs of any relocation works are to be determined in accordance with section 85 of that Act (sharing of costs of necessary measures) and any regulations for the time being having effect under that section, and
 - (b) the allowable costs are to be borne by the nominated undertaker and the operator in such proportions as may be prescribed by any such regulations.
- 36 (1) Where the nominated undertaker or the Secretary of State affords to an operator facilities and rights for the construction, maintenance, repair, renewal and inspection of alternative apparatus on 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, those facilities and rights must be granted upon such terms and conditions as may be agreed between the nominated undertaker or, as the case may be, the Secretary of State, and the operator or, in default of agreement, determined in accordance with paragraph 39.
- (2) In determining such terms and conditions, a person making a determination under paragraph 39 must have regard to any template provisions issued by the appropriate Ministers and determined in accordance with sub-paragraph (3); and must—
- (a) give effect to all reasonable requirements of the nominated undertaker for ensuring the safety and efficient operation of the authorised works 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 operator's ability to fulfil its service obligations.
- (3) For the purposes of determining the matters under sub-paragraph (2) the appropriate Ministers must consult the operators to which paragraph 36 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.
- (4) The independent person making a determination under sub-paragraph (3) 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 (2)(a) and (b).
- (5) 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 operator 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 operator in respect of the difference as is reasonable having regard to all the circumstances of the case.
- 37 (1) Sub-paragraph (2) applies where, by reason of the construction of the authorised works or any subsidence resulting from any of those works—
- (a) damage is caused to any electronic communications apparatus, other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works,

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- (b) damage is caused to property of the operator of an electronic communications code network, or
- (c) there is any interruption in the supply of the service provided by the operator.

(2) The nominated undertaker must—

- (a) bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply,
- (b) make reasonable compensation to the operator for loss sustained by it, and
- (c) indemnify the operator against all claims, demands, proceedings, or damages which may be made or taken against, or recovered from, the operator, by reason of any such damage or interruption.

But this is subject to sub-paragraphs (3) to (5).

- (3) Sub-paragraph (2) does not apply in connection with any apparatus in respect of which the relations between the nominated undertaker and the operator are regulated by the provisions of Part 3 of the New Roads and Street Works Act 1991.
- (4) 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 operator, its officers, servants, contractors or agents.
- (5) The operator must give the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand is to be made without the consent of the nominated undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- (6) This paragraph applies instead of paragraph 14 of Schedule 2 in relation to the exercise of the powers of paragraphs 2 to 6 of that Schedule.

38 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 operator relating to apparatus laid or erected on land belonging to Network Rail.

- 39 (1) Any dispute arising between the nominated undertaker and an operator 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 is otherwise to be determined by a person appointed by the appropriate Ministers.
- (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.

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PART 4

CANAL & RIVER TRUST

- 40 (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 Canal & River Trust.
- (2) In this Part—
- “the canal” means any canal or waterway owned or managed by Canal & River Trust, and includes any works connected therewith for the maintenance of which Canal & River Trust is responsible and any lands held or used by Canal & River Trust for the purposes of the canal including the towpath beside a canal or waterway;
- “construction” includes execution, placing, altering, replacing and relaying and includes removal;
- “plans” includes sections, drawings, specifications and method statements;
- “specified work” means so much of any permanent or temporary work authorised by this Act as is in, across, under, or within 15 metres of, or may in any way affect, the canal.
- 41 The Secretary of State must not under the powers under section 4(1) acquire compulsorily any land of Canal & River Trust or any easement or other right over such land other than such land, or easements or other rights, as is reasonably necessary for, or in connection with, the construction, maintenance or operation of works authorised by this Act having regard also to the statutory duties of Canal & River Trust.
- 42 (1) Before beginning to construct any specified work, the nominated undertaker must submit to Canal & River Trust plans of the work and such further particulars available to it as Canal & River Trust may within 14 days of the submission of the plans reasonably require.
- (2) Any specified work must not be constructed except in accordance with such plans as may be approved in writing by Canal & River Trust or determined under paragraph 50.
- (3) Any approval of Canal & River Trust required under this paragraph must not be unreasonably withheld and—
- (a) is to be deemed to have been given if it is neither given nor refused (with an indication of the grounds for refusal) within 28 days of the submission of the plans for approval or where further particulars are submitted under paragraph 42(1), within 28 days of the submission of those particulars; and
- (b) may be given subject to such reasonable requirements as Canal & River Trust may make for the purpose of ensuring the safety or stability of the canal, including requirements as to the construction of protective works.
- 43 (1) Any specified work, and any protective works required by Canal & River Trust under paragraph 42(3)(b), must be constructed with all reasonable despatch to the reasonable satisfaction of Canal & River Trust, and in such manner as to cause as little damage to the canal as may be reasonably practicable and as little interference as may be reasonably practicable with the passage of vessels using the canal and use of the towpath, and Canal & River Trust is to be entitled by its officer at all reasonable

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times, on giving such notice as may be reasonable in the circumstances, to inspect the construction of such work or works.

- (2) The nominated undertaker must give to Canal & River Trust not less than 28 days' notice of its intention to commence construction of any specified work or any protective works and also, except in emergency (when the nominated undertaker is to give such notice as may be reasonably practicable), of its intention to carry out any works for the repair or maintenance of any specified work insofar as such works of repair or maintenance affect or interfere with the canal.
- 44 (1) The nominated undertaker must not deposit any polluting material on, in or over the canal and must not without the consent of Canal & River Trust—
- (a) deposit any other materials on, in or over the canal (other than materials comprised in a specified work); or
 - (b) notwithstanding anything in this Act, discharge any water directly or indirectly into the canal.
- (2) Any consent of Canal & River Trust required under this paragraph is not to be unreasonably withheld and—
- (a) is to be deemed to have been given if it is neither given nor refused within 28 days of the submission of the request for it; and
 - (b) may be given subject to such reasonable requirements as Canal & River Trust may make—
 - (i) in the case of a deposit, so as to ensure that the use of the canal is not obstructed or rendered less safe, and
 - (ii) in the case of a discharge, concerning the reimbursement by the nominated undertaker of expenses incurred by Canal & River Trust in disposing of the water so discharged, being expenses which Canal & River Trust would not have incurred but for the discharge.
- 45 In its application to the discharge of water into the canal, paragraph 8(5) of Schedule 2 has effect subject to the terms of any conditions attached to the consent under paragraph 44(2) and, where such discharge includes a deposit to which consent has been given under paragraph 44(1), to any conditions attached to that consent.
- 46 (1) If as a result of the construction of any specified work any part of the towpath or access way beside the canal, or any public right of way giving access to that path or way, is temporarily closed to pedestrians or cyclists and there is no way which provides a reasonable alternative, the nominated undertaker must, so far as reasonably practicable and to the extent that it is consistent with safety, provide a substitute path or paths for such time as the closure continues.
- (2) This paragraph is without prejudice to the requirements of paragraph 6(2) or (5) of Schedule 4.
- 47 (1) If any canal work is abandoned, Canal & River Trust may by notice require the nominated undertaker to take such reasonable steps as may be specified in the notice to remove the work and (to such extent as Canal & River Trust reasonably requires) to restore the site to its former condition.
- (2) If any canal work is in such condition that it is, or is likely to become, a danger to or to interfere with navigation, Canal & River Trust may by notice require the nominated undertaker to take such reasonable steps as may be specified in the notice—
- (a) to repair and restore the work or part of it, or

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(b) if the nominated undertaker so elects, to remove the work and (to such extent as Canal & River Trust reasonably requires) to restore the site to its former condition.

(3) If—

- (a) a work which consists of a canal work and a non-canal work is abandoned or falls into decay; and
- (b) the non-canal work is in such a condition as to interfere with the right of navigation in the relevant canal or as to interfere with the rights of access or use of land adjacent to the relevant canal,

Canal & River Trust may include the non-canal work, or any part of it, in any notice under this paragraph.

- (4) If after such reasonable period as may be specified in a notice under this paragraph the nominated undertaker has failed to begin taking steps to comply with the requirements of the notice or after beginning has failed to make reasonably expeditious progress towards their implementation, Canal & River Trust may carry out the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the nominated undertaker.
- (5) In this paragraph “canal work” means so much of any specified work or any other work of which the nominated undertaker is in possession under the powers of this Act as is in or over a canal owned or managed by Canal & River Trust and “non-canal work” means so much of any such work as is not in or over a canal.

- 48 (1) The nominated undertaker must indemnify Canal & River Trust from all claims, demands, proceedings or damages, which may be made or given against, or recovered from Canal & River Trust by reason of any damage to the canal which is caused by the construction of any specified work or protective work or any act or omission of the nominated undertaker, its contractors, agents or employees whilst engaged upon the work and from any costs reasonably incurred in making good such damage.
- (2) Canal & River Trust must give to the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand is to be made without the consent of the nominated undertaker which, if it notifies Canal & River Trust that it desires to do so, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- 49 (1) Nothing in paragraph 48 is to impose any liability on the nominated undertaker with respect to any damage to the extent that it is attributable to the act, neglect or default of Canal & River Trust, its officers, servants, contractors or agents.
- (2) But the fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by Canal & River Trust, or to its satisfaction, or in accordance with a determination under paragraph 50, does not (in the absence of negligence on the part of Canal & River Trust, its officers, servants, contractors or agents) relieve the nominated undertaker from any liability under the provisions of this Part.
- 50 (1) Any dispute arising between the nominated undertaker and Canal & River Trust under this Part of this Schedule 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,

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but must otherwise be determined by a person appointed by the appropriate Ministers.

- (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) In this paragraph, the reference to the appropriate Ministers is to the Secretary of State for Transport and the Secretary of State for Environment, Food and Rural Affairs acting jointly.

PART 5

LAND DRAINAGE, FLOOD DEFENCE, WATER RESOURCES AND FISHERIES

- 51 (1) The following provisions of this Part have effect, unless otherwise agreed in writing between the nominated undertaker and the drainage authority concerned.

- (2) In this Part—

“the Agency” means the Environment Agency;

“a category 1 specified work” means so much of any permanent or temporary work or operation authorised by this Act (which includes, for the avoidance of doubt, any dredging and any geotechnical investigations that may be undertaken) as is likely to—

- (a) affect any drainage work which is or includes a main river or the volumetric rate of flow of water in or flowing to or from any main river,
- (b) affect the flow, purity or quality of water in any main river or other surface waters or ground water, or
- (c) affect the conservation, distribution or use of water resources;

“a category 2 specified work” means any of the following—

- (a) erecting any mill dam, weir or other like obstruction to the flow of any ordinary watercourse, or raising or otherwise altering any such obstruction,
- (b) erecting a culvert in an ordinary watercourse,
- (c) altering a culvert in a manner that would be likely to affect the flow of an ordinary watercourse, or
- (d) altering, removing or replacing a structure or feature designated by a local drainage authority under Schedule 1 to the Flood and Water Management Act 2010;

“construction” includes execution, placing, altering, replacing, relaying and removal and “construct” and “constructed” are construed accordingly;

“the drainage authority” means—

- (a) in relation to a category 1 specified work, the Agency;
- (b) in relation to a category 2 specified work, the drainage board concerned within the meaning of section 23 of the Land Drainage Act 1991;

“drainage work” means any watercourse and any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring, and includes land which provides or is to provide flood storage capacity for any watercourse;

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“fishery” means any waters containing fish and fish in, or migrating to or from such waters and the spawn, spawning grounds or food of such fish;

“local drainage authority” means a drainage authority other than the Agency;

“a main river” and “ordinary watercourse” have the meanings given by respectively the Water Resources Act 1991 and the Land Drainage Act 1991;

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

“watercourse” includes all rivers, streams, ditches, drains, cuts, culverts, dykes, sluices, sewers and passages through which water flows except a public sewer as defined by the Water Industry Act 1991.

- (3) Where any approval is required under this Part from a local drainage authority, that authority must—
- (a) have regard, in imposing any conditions or requirements, to any model conditions issued by the Agency (following consultation with the other drainage authorities and the nominated undertaker);
 - (b) consult the Agency in any case where it proposes to impose conditions or requirements, or to refuse approval, and must specifically seek the Agency's advice concerning any proposal to depart from the model conditions;
 - (c) provide the nominated undertaker with reasons and supporting evidence in any case where it gives a decision which does not accord with the view or advice of the Agency given in response to consultation under paragraph (b).
- 52 (1) Before beginning to construct any specified work, the nominated undertaker must submit to the drainage authority plans of the work and such further particulars available to it as the drainage authority may within 28 days of the 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 61.
- (3) Any approval of the drainage authority required under this paragraph—
- (a) must not be unreasonably withheld,
 - (b) is to be deemed to have been given if it is neither given nor refused within 56 days of the submission of the plans for approval or where further particulars are submitted under sub-paragraph (1), within 56 days of the submission of those particulars, and
 - (c) may be given subject to such reasonable requirements or conditions as the drainage authority may make for the protection of any drainage work or fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its statutory environmental duties.
- 53 The requirements which the drainage authority may make under paragraph 52 include conditions requiring the nominated 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 drainage work against damage, or
 - (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased,

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by reason of the specified work.

- 54 (1) Any specified work, and all protective works required by the drainage authority under paragraph 52, 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 nominated undertaker must give to the drainage authority not less than 14 days' notice of its intention to commence construction of any specified work and notice of its completion not later than 7 days after the date on which it is brought into use.
- (3) If any part of the works comprising a structure in, over or under a watercourse is constructed otherwise than in accordance with the requirements of this Part, the drainage authority may by notice require the nominated undertaker at the nominated undertaker's own expense to comply with the requirements of this Part or (if the nominated undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work and, where removal is required, 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 nominated undertaker, it has failed to begin taking steps to comply with the requirements of the notice and subsequently to make reasonably expeditious progress towards their implementation, the drainage authority may execute the works specified in the notice and any expenditure reasonably incurred by it in so doing is to be recoverable from the nominated undertaker.
- (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.
- 55 (1) Subject to sub-paragraph (5) the nominated undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the nominated undertaker for the purposes or in connection with the specified works, whether the drainage work is constructed under this Act or is already in existence.
- (2) If any such drainage work is not maintained to the reasonable satisfaction of the drainage authority, the drainage authority may by notice require the nominated undertaker to repair and restore the work, or any part of it, or (if the nominated undertaker so elects and the drainage authority in writing consents, such consent not to be unreasonably withheld or delayed), to remove the drainage work and restore the site to its former condition, to such extent and within such limits 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 nominated undertaker, the nominated 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

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authority may do what is necessary for such compliance and may recover any expenditure reasonably incurred by it in so doing from the nominated undertaker.

- (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 under an obligation to maintain and is not prescribed by the powers of the Act from doing so;
 - (b) any obstruction of a drainage work for the purpose of a work or operation authorised by the Act and carried out in accordance with the provisions of this Part.
- 56 (1) If by reason of the construction of any specified work or of the failure of any such work the efficiency of any drainage work for flood defence purposes is impaired, or that work is otherwise damaged, so as to require remedial action, such impairment or damage must be made good by the nominated undertaker to the reasonable satisfaction of the drainage authority and if the nominated undertaker fails to do so, the drainage authority may make good the same and recover from the nominated undertaker the expense reasonably incurred by it in doing so.
- (2) In any case where immediate action by the drainage authority is reasonably required in order to secure that the imminent flood risk is avoided or reduced, the drainage authority may take such steps as are reasonable for the purpose, and may recover from the nominated undertaker the reasonable cost of so doing provided that notice specifying those steps is served on the nominated undertaker as soon as reasonably practicable after the drainage authority has taken, or commenced to take, the steps specified in the notice.
- (3) Nothing in paragraphs 54, 55 or 56 authorises the drainage authority to execute works on or affecting an operational railway without the prior consent in writing of the nominated undertaker, such consent not to be unreasonably withheld.
- 57 (1) The nominated undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in any fishery during the construction of any specified work.
- (2) If by reason of—
- (a) the construction of any specified work, or
 - (b) the failure of any such work,
- damage to a fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the nominated undertaker requiring it to take such steps as may be reasonably practicable to make good the damage or, as the case may be, to protect the fishery against such damage.
- (3) If, within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to a fishery, the nominated undertaker fails to take such steps as are described in sub-paragraph (2), the Agency may take those steps and may recover from the nominated undertaker the expense reasonably incurred by it in doing so.

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- (4) In any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to a fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the nominated undertaker the reasonable cost of so doing provided that notice specifying those steps is served on the nominated undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.
- 58 (1) The nominated undertaker must indemnify the drainage authority from all claims, demands, proceedings or damages, which may be made or taken against, or recovered from the drainage authority by reason of—
- (a) any damage to any drainage work so as to impair its efficiency for flood defence purposes,
 - (b) any damage to a fishery,
 - (c) any raising or lowering of the water table in land adjoining the works authorised by this Act or adjoining any sewers, drains and watercourses, or
 - (d) any flooding or increased flooding of any such lands,
- which is caused by, or results from, the construction of any specified work or any act or omission of the nominated undertaker, its contractors, agents or employees whilst engaged upon the work.
- (2) The drainage authority must give to the nominated undertaker reasonable notice of any such claim or demand and no settlement or compromise of any such claim or demand is to be made without the consent of the nominated undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.
- 59 Nothing in paragraph 58 requires the nominated undertaker to indemnify the drainage authority in respect of any claim, demand, proceedings or damages which the drainage authority could reasonably make, take against or recover from any other person.
- 60 The fact that any work or thing has been executed or done in accordance with a plan approved or deemed to be approved by the drainage authority, or to its satisfaction, or in accordance with any determination under paragraph 51, does not (in the absence of negligence on the part of the drainage authority, its officers, contractors or agents) relieve the nominated undertaker from any liability under the provisions of this Part.
- 61 Any dispute arising between the nominated undertaker and the drainage authority under this Part is to be determined by arbitration.

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