

SCHEDULE 2

Article 12

PROTECTIVE PROVISIONS

PART I

*For the protection of the Environment Agency*

1. For the protection of the Environment Agency (in this part of this Schedule referred to as “the Agency”) the following provisions shall, unless otherwise agreed in writing between the undertaker and the Agency, apply and have effect.

2. Nothing in this Order or in any enactment incorporated with or applied by this Order shall prejudice or affect the operation of section 109 of the Water Resources Act 1991(1) or any byelaws made under that Act or the Land Drainage Act 1991(2) in relation to anything done under or in pursuance of this Order.

3.—(1) Before carrying out any works involving the erection of any obstruction to the flow of any watercourse which is not part of a main river within the meaning of section 113 of the Water Resources Act 1991 or the construction, alteration or replacement of any culvert or any structure designed to contain or divert the flow of any such watercourse in, under or through any land held for the purposes of or in connection with the railway, the undertaker shall furnish to the Agency proper and sufficient plans thereof for the approval of the Agency and shall not carry out the said works until the said plans have been approved in writing by the Agency.

(2) The approval of plans furnished under this paragraph shall not be unreasonably withheld and if, within 2 months after such plans have been supplied to the Agency, the Agency shall not have intimated its disapproval and the grounds of its disapproval it shall be deemed to have approved the plans as supplied.

(3) For the purposes of this paragraph, “plans” includes sections, drawings, specifications, calculations and descriptions.

4.—(1) Any culvert or any structure designed to contain or divert the flow of any watercourse situated within any land held for the purposes of or in connection with the railway, whether constructed under the powers of this Order or in existence prior to the making hereof, shall be maintained by the undertaker in good repair and condition and free from obstruction.

(2) Nothing in this paragraph shall have the effect of requiring the undertaker to carry out works of maintenance in respect of any culvert or structure which the Agency or any other person is liable to maintain.

5. If any obstruction is erected or any culvert is constructed, altered or replaced in contravention of the provisions of this part of this Schedule the undertaker shall, upon receiving notice from the Agency, take such action as may be necessary to remedy the effect of the contravention to the Agency’s satisfaction; and in default the Agency may itself take such action as may be necessary and recover the expenses reasonably incurred by it in doing so from the undertaker as a debt due from it to the Agency.

6. Any dispute or difference which may arise between the Agency and the undertaker under this part of this Schedule shall be determined by arbitration.

7. The provisions of the 1845 Act applied by this Order shall be subject to the provisions of this part of this Schedule.

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(1) 1991 c. 57.

(2) 1991 c. 59.

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

## PART II

### *For the protection of public gas transporters*

**8.** Nothing in this Order shall prejudice or affect the statutory or other rights of any public gas transporters within the meaning of Part I of the Gas Act 1986<sup>(3)</sup> in or relating to any pipe, main or apparatus belonging to them or for the maintenance of which they are responsible, or any structure for the lodging therein of any pipe, main or apparatus, being any pipe, main or apparatus or structure situate under, over or upon lands in or upon or near to which the railway or any part thereof is constructed.

## PART III

### *For the protection of sewerage undertakers*

**9.—(1)** For the protection of sewerage undertakers the following provisions of this part of this Schedule shall, unless otherwise agreed in writing between the undertaker and the sewerage undertaker concerned, apply and have effect.

(2) In this part of this Schedule, “relevant pipe”, in relation to any sewerage undertaker, has the meaning given in section 179(7) of the Water Industry Act 1991<sup>(4)</sup> but does not include any apparatus in respect of which the relations between a sewerage undertaker and the undertaker are regulated by the provisions of Part III of the New Roads and Street Works Act 1991<sup>(5)</sup>.

**10.** Nothing in this Order, or in section 18 of the 1845 Act in its application to the railway, shall authorise the undertaker to raise, sink or otherwise alter the position of, or in any way interfere with, any relevant pipe without the consent in writing of the sewerage undertaker concerned, such consent not to be unreasonably withheld.

**11.—(1)** Where any relevant pipe is situated in or under land owned or held for the purpose of the railway the undertaker shall at its own expense maintain all culverts over such relevant pipe which are in existence at the coming into force of this Order so as to leave the relevant pipe accessible for the purpose of repairs.

(2) Nothing in this part of this Schedule shall have the effect of requiring the undertaker to carry out works of maintenance in respect of any culvert which a sewerage undertaker or any other person is liable to maintain.

**12.—(1)** The undertaker shall afford reasonable facilities to a sewerage undertaker for the execution and doing of all such works and things as may be reasonably necessary to enable it to maintain, renew or use any relevant pipe.

(2) The undertaker shall compensate a sewerage undertaker—

- (a) for any damage done or disturbance caused to any relevant pipe; and
- (b) for any damage done, by reason or in consequence of the execution, maintenance, user or failure of any of the authorised works or otherwise by reason or in consequence of the exercise by the undertaker of the powers of this Order.

(3) Nothing in this part of this Schedule shall entitle a sewerage undertaker to any payment in respect of damage attributable to the neglect or default of the sewerage undertaker, its servants or agents.

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(3) 1986 c. 44; the term “public gas transporter” is defined in section 7(1) and substituted by section 5 of the Gas Act 1995 (c. 45).

(4) 1991 c. 56.

(5) 1991 c. 22.

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

**13.** Nothing in this Order shall prejudice or affect the rights of a sewerage undertaker in respect of any relevant pipe or in the provisions of any agreement regulating the relationship between the undertaker and a sewerage undertaker with regard to any relevant pipe and whether made before or after this Order comes into force.

**14.** The provisions of the 1845 Act as applied by this Order shall be subject to the provisions of this part of this Schedule.

**15.** Any difference arising between the undertaker and a sewerage undertaker under this part of this Schedule shall be determined by arbitration.