

SCHEDULES

SCHEDULE 13

PROTECTIVE PROVISIONS

PART III

PROTECTION FOR SEWERAGE UNDERTAKERS

18.—(1) For the protection of sewerage undertakers the following provisions shall, unless otherwise agreed in writing between Network Rail and the sewerage undertaker concerned, have effect.

(2) In this part of this Schedule—

“construction” includes placing or altering; and “constructed” shall be construed accordingly;

“plan” includes sections and method statements;

“sewer” means a public sewer within the meaning of the Water Industry Act 1991 and includes a disposal main within the meaning of that Act;

“specified work” means so much of the authorised works as will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon, any sewer; and

“the undertaker” means the sewerage undertaker for the area of the works or whose sewers are affected.

(3) The provisions of Schedule 12 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

19.—(1) Before commencing the construction or renewal of any specified work and in the case of any temporary work its removal, Network Rail shall submit to the undertaker plans of the work as described in sub-paragraph (3) (in this Part of this Schedule referred to as “the plans”) and shall not commence that work until the undertaker has signified in writing its approval of those plans.

(2) Any approval of the undertaker required under this paragraph—

(a) may be given subject to reasonable conditions,

(b) shall not be unreasonably withheld, and

(c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

(3) The plans to be submitted to the undertaker shall be detailed plans, drawings, sections and specifications describing the position and manner in which, and the level at which, any specified work is proposed to be constructed and the position of all sewers of the undertaker within 15 metres of that work or upon which the specified work will impose a load and shall include detailed drawings of every alteration which Network Rail may propose to any such sewers.

(4) For the purpose of the preparation of the plans the undertaker shall permit Network Rail to have access to plans in its possession and to any of its sewers.

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(5) The undertaker may require such modifications to be made to the plans as may be reasonably necessary to secure the sewerage system of the undertaker against interference or risk of damage and to provide and secure proper and convenient means of access to any sewer.

20.—(1) The specified work shall be constructed and in the case of any temporary work removed, in accordance with the plans approved, or deemed to have been approved under paragraph 19 or settled by arbitration, as the same may be amended from time to time by agreement between Network Rail and the undertaker, and in the construction or removal of any specified work Network Rail shall comply with all reasonable requirements of the undertaker and shall provide new, altered or substituted sewers or works for the protection of any sewers of the undertaker, in such manner as the undertaker may reasonably require by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such sewer by reason of any specified work.

(2) All works under sub-paragraph (1) for the provision of new, altered or substituted sewers or the protection of any sewers of the undertaker shall, where so required by the undertaker, be constructed by the undertaker or under the supervision (if given) of an officer of the undertaker duly appointed for the purpose, and all costs, charges and expenses reasonably incurred by the undertaker in the construction of such works, or in the preparation or examination of plans or designs for such works, or in such supervision, shall be paid to the undertaker by Network Rail.

(3) When works for the provision of any such new, altered or substituted sewer, or any such protective work forming part of any such new, altered or substituted sewer or any existing sewer of the undertaker, have been completed under this Part of this Schedule to the reasonable satisfaction of the undertaker, they shall be vested in and become maintainable by the undertaker.

21.—(1) Subject to the following provisions of this Part of this Schedule, Network Rail shall be liable to make good, or, if the undertaker so decides, to repay to the undertaker any expense reasonably incurred by the undertaker in making good, all injury or damage to any sewers, drains or works vested in the undertaker (except in so far as such sewer, drain or work is intended for alteration or removal for the purposes of the specified work) caused by or resulting from the construction of any specified work or any investigation undertaken in respect of any specified work and the provision of any new, altered or substituted sewer or any protective work under this Part of this Schedule and shall pay to the undertaker any additional expense to which it may be put in the maintenance, management or renewal of any new, altered or substituted sewer which may be necessary in consequence of the construction of any specified work.

(2) Network Rail shall indemnify the undertaker against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the undertaker, which the undertaker may incur or have to pay or which it may sustain in consequence of the construction of any specified work or of the failure or want of repair of any specified work or any subsidence caused by the construction of any specified work or in consequence of any act or omission of Network Rail, its contractors, agents, workmen or servants, whilst engaged upon any specified work and any new, altered or substituted sewer or any protective work.

(3) The undertaker shall give to Network Rail reasonable notice of any such claim or demand as is mentioned in sub-paragraph (2) and no settlement or compromise of the claim or demand shall be made without the agreement in writing of Network Rail.

(4) Nothing in sub-paragraph (1) or (2) shall impose any liability on Network Rail in respect of any damage to the extent that it is attributable to the act, neglect or default of the undertaker, its officers, servants, or, if not Network Rail, its contractors or agents.

(5) If in pursuance of the provisions of this Part of this Schedule—

- (a) a sewer of better type, of greater capacity or of greater dimensions is placed in substitution for an existing sewer 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) a sewer (whether an existing sewer or a sewer substituted for an existing sewer) is placed at a depth greater than the depth at which the existing sewer was, and the placing of a sewer of that type or capacity or of those dimensions or the placing of a sewer at that depth, as the case may be, is not agreed by Network Rail or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves costs in the construction of works under this Part of this Schedule exceeding that which would have been involved if the sewer 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 undertaker by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(6) For the purposes of sub-paragraph (5) an extension of a sewer to a length greater than the length of an existing sewer shall not be treated as a placing of a sewer of greater dimensions than those of the existing sewer.

(7) An amount which apart from this sub-paragraph would be payable to the undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant, to sub-paragraph (5)) shall, if the works include the placing of a sewer provided in substitution for a sewer placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the sewer in the ordinary course, be reduced by the amount which represents that benefit.

(8) Sub-paragraphs (1) and (5) to (7) shall not apply where the authorised works constitute major transport works for the purposes of Part III of the Street Works Act, but instead—

- (a) the allowable costs of the construction of works under this Part of this Schedule shall be determined in accordance with section 85 of that Act (sharing of cost of necessary measures) and any regulations for the time being having effect under that section; and
- (b) the allowable costs shall be borne by Network Rail and the undertaker in such proportions as may be prescribed by any such regulations.

22.—(1) An officer of the undertaker duly appointed for the purpose may, at any reasonable time and, if required by Network Rail, under its supervision and control, enter upon and inspect any specified work or any other works constructed under this Part of this Schedule.

(2) The approval by the undertaker of any plans, drawings, sections or specifications or the supervision by it of any work under this Part of this Schedule shall not (if it was done without negligence on the part of the undertaker, its officers, servants, or, if not Network Rail, its contractors or agents) exonerate Network Rail from any liability or affect any claim for damages by the undertaker.

23.—(1) Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 12 of this Order, the undertaker shall be at liberty at all times to construct and do all such works and things in, upon or under any such highway as may be reasonably necessary to enable it to maintain, renew, protect or use any sewer which at the time of the stopping up or diversion was in that highway.

(2) Where, in consequence of this Order, any part of any street, bridleway or footpath in which any sewer is situated ceases to be part of the street, bridleway or footpath, the undertaker may exercise the same rights of access to such sewer as it enjoyed immediately before the coming into force of this Order, but nothing in this paragraph shall affect any right of Network Rail or of the undertaker to require alteration of such sewer under this Part of this Schedule.

24. Network Rail shall, so far as is reasonably practicable, so exercise the powers conferred by article 20 of this Order as not to obstruct or render less convenient the access to any sewer.

25. As soon as reasonably practicable after the completion of the construction of any specified work Network Rail shall deliver to the undertaker a plan and section showing the position and level

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of that work as constructed and all new, altered or substituted works provided under this Part of this Schedule.

26. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between Network Rail and the undertaker in respect of any sewer or other apparatus constructed, laid or erected in land belonging to Network Rail before the coming into force of this Order.

27. Any difference arising between Network Rail and the undertaker under this Part of this Schedule shall be referred to and settled by arbitration under article 44 of this Order.