

SCHEDULES

SCHEDULE 5

PROTECTIVE PROVISIONS

Part III

Protection for sewerage undertakers

1.—(1) For the protection of sewerage undertakers the following provisions shall, unless otherwise agreed in writing between Railtrack 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;

“sewer” means a public sewer within the meaning of the Water Industry Act 1991⁽¹⁾ and includes a disposal main within the meaning of that Act and any manholes, ventilating shafts, pumps or accessories forming part of any such sewer;

“specified work” means so much of the 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 4 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

2.—(1) Before commencing the construction or renewal of any specified work, and in the case of any temporary work its removal, Railtrack shall submit to the undertaker plans for those works as described in sub-paragraph (2) below (“the plans”) and shall not commence that work until the undertaker has signified in writing its approval of those plans.

(2) 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 Railtrack may propose to any such sewers.

(3) For the purpose of the preparation of the plans and subject to such reasonable requirements as it may specify, the undertaker shall permit Railtrack to have access to plans in its possession and to any of its sewers.

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

(a) may be given subject to reasonable conditions,

(b) shall not be unreasonably withheld,

(1) 1991 c. 56.

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(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.

(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.

3.—(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, or settled by arbitration, as the same may be amended from time to time by agreement between Railtrack and the undertaker, and in the construction or removal of the specified work Railtrack 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) above, 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 of such works, or in such supervision, shall be paid to the undertaker by Railtrack.

(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.

4.—(1) Subject to the following provisions of this Part of this Schedule, Railtrack 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 relation to any specified works 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 or any new, altered or substituted sewer which may be necessary in consequence of the construction of any specified work.

(2) Railtrack 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 a specified work or of the failure or want of repair of a specified work or any subsidence cause by the construction of any specified work or in consequence of any act or omission of Railtrack, their contractors, agents, workmen or servants, whilst engaged upon the specified work and any new, altered or substituted sewer or any protective work.

(3) The undertaker shall give to Railtrack reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement in writing of Railtrack.

(4) Nothing in sub-paragraph (1) or (2) above shall impose any liability on Railtrack 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 Railtrack, its contractors or agents.

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

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- (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 is 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 Railtrack or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost 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) above shall be reduced by the amount of that excess.

(6) For the purposes of sub-paragraph (5) above 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) above (and having regard, where relevant, to sub-paragraph (5) above) 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) above 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 Railtrack and the undertaker in such proportions as may be prescribed by any such regulations.

5.—(1) An officer of the undertaker duly appointed for the purpose may, at any reasonable time and, if required by Railtrack, under their 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 Railtrack, its contractors or agents) exonerate Railtrack from any liability or affect any claim for damages by the undertaker.

6. Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 10 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, protect, or use any sewer which at the time of the stopping up or diversion was in that highway.

7. As soon as reasonably practicable after the completion of the construction of the specified works, Railtrack shall deliver to the undertaker a plan and section showing the position and level of those works as constructed and all new, altered or substituted works provided under this Part of this Schedule.