

Anglian Water Services Limited (Anglian Water) is the statutory body responsible for water and sewerage services within the application site. The proposed scheme will affect assets belonging to Anglian Water and therefore Protective Provisions in respect of these assets are required.

At the current time the Protective Provisions set out in Schedule 14 Part 1 "Protection of Electricity, Gas, Water and Sewerage Undertakers" in the Draft Development Consent Order (DCO) are not agreed; however, Anglian Water is aware that the Applicant will be requesting a change to the application at Deadline 2 to remove the connection to the Anglian Water foul sewer and progress an infiltration drainage option. Following this, the draft Statement of Common Ground (SoCG) will be progressed.

Anglian Water is also in discussions with the Applicant regarding the wording of the Protective Provisions included in the Draft DCO as they are based on an old version of Anglian Water's Protective Provisions template. The Applicant has been sent the latest version of the Protective Provisions template and discussions regarding the use of this will continue and will be addressed in the draft SoCG.

To provide further context to this, in Anglian Water's view Schedule 14 (Protective Provisions) Part 9 (For the Protection of Anglian Water Services Limited) of the Draft DCO is essential for regulating the relationship between the undertaker and Anglian Water. Both have legitimate wider public interests to consider and the protective provisions seek to find an ordered way of accommodating both parties' aims without frustrating the others.

The standard utility protective provisions suggested by the Infrastructure Planning (Model Provisions) (England and Wales) Order 2009 (SI 2009/2265) contain a number of shortcomings so far as water and sewerage networks are specifically concerned. We do not propose to go into those here as the undertaker is not suggesting limiting the DCO to that form in respect of Anglian Water's networks. Because of those shortcomings and the increasing number of DCOs affecting Anglian Water's assets, Anglian Water has sought to provide a standard form of protective provisions. These are intended to have two purposes. First, they aim to ensure public water and sewerage networks can be operated without interruption to the public. Secondly, they simply make the relationship between a DCO undertaker and Anglian Water much more workable and certain in the period up to and including the construction phase.

The undertaker is currently proposing an obsolete version of Anglian Water's standard provisions. This version was circulated until Summer 2022, and was then updated. This revision process followed engagement with the legal advisors to National Highways, who are pursuing a number of DCOs in the Anglian Water area, and who felt that the drafting could be improved. The areas of improvement are as follows:

- it tidies up the text by defining "the Act" as meaning the Water Industry Act 1991 (which is frequently referred to);
- it clarifies that "Anglian Water" means "Anglian Water Services Limited", which is the corporate entity holding the Secretary of State's appointment as a water and sewerage undertaker under the Act;
- it includes sustainable drainage systems in the definition of what is considered "apparatus" requiring protection (these having become essential elements of flow mitigation in sewerage networks in recent years, but are not traditionally considered to be "sewers");
- a general re-ordering is clearer about how the protective provisions work in respect of the individual DCO powers available to the undertaker, which might affect Anglian Water's apparatus, whilst also providing the undertaker with increased flexibility;

- it obliges Anglian Water to assist the undertaker with the exercise of its own statutory powers to enable a diversion of assets, if the DCO powers do not extend to the new route;
- it is clear about the process required to establish and prosecute any necessary work stream on the part of the undertaker or Anglian Water, including details concerning the provision of the undertaker's proposals in respect of Anglian Water's apparatus and how long the latter has to consider them;
- it provides the undertaker with clearly defined "step-in" rights where Anglian Water is unable or unwilling to carry out diversion works itself;
- it provides for betterment;
- it is clear about the extent of the indemnity the undertaker gives to Anglian Water (including as to subsidence caused by the undertaker's works) and the limits to that indemnity; and
- it provides for the safe and efficient co-ordination of works (between any diversion of apparatus and the undertaker's construction).

Overall, we do not consider that the updated version is any more favourable either to Anglian Water or to the undertaker; but we do consider that it is far better for the above reasons. We also consider that the standard template protective provisions strike the right balance between certainty and flexibility in order to work in the circumstances presented by most DCOs.

Given the large geographical area to which Anglian Water is the appointed water and sewerage undertaker, DCOs that affect its assets are frequent and becoming increasingly so. In order to maintain a level of administrative efficiency in dealing with DCO undertakers, it is important that consistency is maintained within the terms of engagement offered by way of the protective provisions. Otherwise, it is difficult to establish internal processes that can cater for different permutations within this legal framework.

We look forward to being able to progress the draft SoCG with the Applicant for submission to the Examining Authority in due course.