

Representations of Thames Water Utilities Limited in relation to the application by Transport for London for an Order granting Development Consent for the proposed Silvertown Tunnel

Summary

Thames Water Utilities Limited (“TWUL”) is appointed under Chapter 1 of Part II of the Water Industry Act 1991 (“WIA”) as water and sewerage undertaker for the Thames region, which includes the location of the Silvertown Tunnel.

TWUL does not object in principle to the Silvertown Tunnel scheme, but owns a significant number of sewers, drains, water mains and other apparatus throughout the land that will be affected by the scheme, and which will either need to be diverted or protected as a result of the same. TWUL also owns land which is to be temporarily occupied for the purpose of the scheme.

TWUL does not believe that the provisions of the draft Development Consent Order (“the Order”) satisfactorily protect TWUL’s existing and future apparatus, interests in land, ability to comply with its statutory duties or ability to exercise its statutory powers. TWUL also requires clarity in relation to certain provisions, and parity with provisions afforded to other undertakers under the Order. TWUL proposes amendments to specific provisions in order to alleviate these concerns.

TWUL’s proposed amendments to the Order are:

In relation to Article 14, TWUL requires comfort that the Applicant will comply with the relevant provisions of WIA in relation to discharges that fall within the scope of WIA. TWUL also requires an amendment to provide for deemed refusal rather than deemed consent.

TWUL believes that protective measures installed above apparatus could interfere with its statutory powers to access apparatus for the purpose of maintenance and repair, and proposes an amendment to Article 29(6)(d) to ensure these measures are removed if they interfere with access, create additional expense or impact on the operation of the apparatus.

TWUL’s proposed amendments to the Protective Provisions in Part 1 of Schedule 13 are:

The definitions in paragraph 2, including to the definitions of ‘alternative apparatus’ and ‘apparatus’, should be amended to fully reflect all apparatus that TWUL owns or could own that would need to be protected under the Order, and to capture how alternative apparatus should be characterised.

TWUL proposes an amendment to paragraph 4(1) to clarify that TWUL has statutory powers to lay new apparatus in the land affected by the Order.

The Applicant has no power to acquire apparatus (paragraph 5), but does have power to acquire land and interests in land. TWUL therefore proposes an amendment to clarify that the Order does not authorise the acquisition or extinguishment of rights in land that are required for the maintenance of retained apparatus, rather than referring to acquiring apparatus.

TWUL proposes an increase to the notice period in various provisions from 28 days to not less than 56 days, and requests an amendment to require the Applicant to consult and agree technical solutions before serving notice.

TWUL believes that paragraph 6(3) should be removed, or alternatively amended to remove the requirement on TWUL to use its compulsory purchase powers, and to require the Applicant to use all reasonable endeavours to obtain rights and facilities before serving notice.

TWUL requires an amendment to paragraphs 6(5) and 8 to ensure the Applicant obtains TWUL consent before working on TWUL existing or future apparatus, and also to paragraph 6(7) to increase the protective zone from 300mm to 600mm.

Where TWUL has rights and facilities (in addition to its statutory powers) over apparatus to be diverted, the arbitrator should ensure that the rights and facilities for alternative apparatus are not less favourable than TWUL's existing rights (paragraph 7(2)).

TWUL requires notice of any works that could impact on TWUL apparatus, and not just works authorised under paragraph 6(2) (paragraph 8), and requests an amendment which obliges the Applicant to assess impact and propose mitigation.

TWUL proposes an amendment to paragraph 9(1) to ensure consistency with the expenses provisions afforded to National Grid, and to 9(3) and (4) to clarify when costs should not be deducted from overall expenses.

The Applicant has given National Grid a comprehensive indemnity in relation to losses suffered in consequence of works authorised under the Order or otherwise, and TWUL requests the same indemnity.

TWUL holds freehold interests in land on which it has a sewer outfall and access routes. TWUL requires comfort that the outfall will be protected under the Order and that the Applicant will maintain access for the purpose of the exercise by TWUL of its statutory powers.

Representations

TWUL is appointed under WIA as water and sewerage undertaker for the Thames region, which includes the location of the Silvertown Tunnel.

TWUL submitted a Relevant Representation on 30 August 2016 (registration identification number 352). As detailed in its Relevant Representation, TWUL does not in principle object to the Silvertown Tunnel. However, TWUL owns a significant number of sewers, drains, water mains and other apparatus that are located throughout the land affected by the Order. Some of this apparatus, including some strategic apparatus, will be directly affected by the Applicant's proposals and will need to be diverted or relocated because of the Order. Details of some of the apparatus that has already been identified by the Applicant as apparatus that will be affected by the Order are set out in sections 9 and 10 of the Settlement Assessment Report at Appendix 12.B of the Silvertown Tunnel Environmental Statement. Other apparatus may need to be protected during construction, but this apparatus has not yet been identified. TWUL and the Applicant have been working together to discuss the potential technical solutions for diverting apparatus, but have not discussed all apparatus or technical solutions in detail at this stage. TWUL will continue to work with the Applicant to identify all apparatus that will be affected and to finalise appropriate solutions for protecting or diverting that apparatus.

TWUL also holds freehold interests in land to be temporarily occupied by the Applicant. Details of TWUL's land interests are included in the Statement of Reasons prepared by the Applicant (plots 05-033 and 06-078).

As the appointed water and sewerage undertaker for the Thames region, TWUL is obliged to comply with the numerous statutory duties set out in WIA. WIA also grants TWUL various powers to enable it to comply with its statutory duties. Please find attached at appendix 1 copies of all relevant sections of WIA referred to substantively in these representations for the Examining Authority's reference, if required.

TWUL's overarching primary duties as regards the provision of a water supply and sewerage system are set out in sections 37 and 94 WIA. These sections are summarised below:

The duty to maintain a water supply system is a duty to develop and maintain an efficient and economical system of water supply and to ensure that arrangements are made for providing supplies of water to premises and for making supplies available to people who demand them, and for maintaining, improving and extending water mains and other pipes that are necessary for securing that all obligations under sections 37-93 WIA are met (s37(1) WIA).

The duty to provide a sewerage system is a duty to provide, improve and extend such a system of public sewers and to cleanse and maintain those sewers to ensure that the area is and continues to be effectually drained, and to make provision for emptying sewers and effectually dealing with the contents of sewers by means of sewage disposal works or otherwise. This duty includes having regard to existing or future obligations to allow for the discharge and disposal of trade effluent (s94(1)-(2) WIA).

TWUL's primary duties and certain other duties under WIA are enforceable under section 18 WIA by the Secretary of State or Ofwat. Enforcement can range from enforcement orders (s18(1)-(2)WIA) to financial penalties (s22A(2) WIA), which can be up to 10% of turnover (s22A(11)). In addition to enforcement under section 18 WIA, certain provisions relating to water supply and sewerage services also contain other remedies, including the creation of private rights of action for breach of statutory duty in relation to losses incurred as a result of any such breach.

TWUL proposes amendments to the Order to ensure the provisions satisfactorily protect TWUL's existing and future apparatus, interests in land and its ability to comply with its statutory duties and to exercise its statutory powers. TWUL also requires clarity in relation to certain provisions, and parity with provisions afforded to other undertakers under the Order.

TWUL and the Applicant have been in correspondence regarding TWUL's representations and will continue to do so in an effort to narrow the issues between the parties. The Applicant's initial comments on TWUL's representations were received by TWUL on 10 October 2016 and TWUL's further comments on its representations were provided to the Applicant on 2 November 2016. At this stage, no agreement has been reached as regards TWUL's representations, save that TWUL has withdrawn its objection to Article 32. TWUL and the Applicant have agreed an initial Statement of Common Ground, which the parties will keep updated throughout the course of the examination for the Examining Authority's information.

TWUL's proposed amendments are set out below:

Article 14:

Article 14 gives the Applicant a right to discharge water in connection with the *'carrying out and maintenance of the authorised development'*. It states that disputes about connections to or use of public sewers or drains will be determined as disputes under section 106 WIA and that consent is deemed to be given if the owner of the sewer or drain does not respond to an application for consent within 28 days.

The Explanatory Memorandum to the DCO says that the purpose of Article 14 is to establish statutory authority to discharge water into a sewer, drain or watercourse.

WIA already contains statutory authority for connecting to the public sewer network and for discharging foul and surface water (s106 WIA¹) and effluent produced in the course of trade

¹ Section 106(1) entitles the owner or occupier of any premises, or the owner of any private sewer which drains premises, to have his drains or sewer communicate with the public sewer in order to discharge foul water and surface water from those premises or that private sewer. Drains and sewers are defined in the context of apparatus that drain building(s) or yards appurtenant to building(s) (s219(1) WIA). As such s106 WIA permits the discharge of foul and surface water from buildings and appurtenant yards.

or industry (s118 WIA²). WIA has not been disapplied by the DCO and TWUL requires comfort that any discharges that fall within the scope of these provisions will be processed in accordance with WIA and not Article 14.

Article 14 permits water discharges in connection with the carrying out and maintenance of the authorised development. Water discharges in connection with '*carrying out of the authorised development*' may include water resulting from dewatering during tunnel construction, which could be contaminated, and other polluted water resulting from the construction process, such as washout of equipment/site, which may include substances such as concrete residue, sand, gravel, soil and chemical substances used in the construction process. Water discharges in connection with the '*maintenance of the authorised development*' may include general tunnel drainage, including water from leakage, rainwater and other potential sources of water such as water from fire-fighting in the tunnel, and any trade effluent produced in the course of the maintenance of the authorised development.

Other than trade effluent, the discharges anticipated under Article 14 are not discharges that are permitted under WIA and TWUL is not therefore funded to receive, convey or treat such discharges. In normal circumstances, a person who wishes to discharge substances like groundwater from tunnel dewatering or water from construction sites, would need to agree this non-statutory arrangement with TWUL.

TWUL understands that the purpose of Article 14 is to give statutory authority to discharges that are not permitted under WIA. However, TWUL objects to Article 14(4) which refers to deemed consent.

Deemed consent, which applies to section 106 WIA connections and discharges, but notably not to section 118 discharges, is appropriate in circumstances where the risk of the connection and discharge is low. For example, deemed consent is appropriate for section 106 WIA discharges, as section 106 WIA is prescriptive about the nature of the discharge permitted, and the sewerage system and treatment process are designed to convey and treat the permitted discharge i.e. foul and surface water from buildings and yards appurtenant to buildings (see footnote 1). Furthermore TWUL can only refuse to grant consent to connect if the physical construction or condition of the drain or sewer doesn't meet specified criteria (s106(4)); it cannot refuse to accept permitted discharges. Anyone who discharges in breach of the terms of s106 WIA is guilty of an offence under s109(1) WIA and it is through this provision that TWUL ensures compliance with s106 WIA.

However, deemed consent is not appropriate where the nature of the discharge is unknown, where the undertaker needs to consider the risk and mitigate it before any discharge is made, and where conditions on discharge may be required to mitigate the risk. For example, deemed consent is not permitted for section 118 discharges, as section 118 is not prescriptive about the nature of the discharge permitted and because trade effluent can contain substances and can involve quantities that the sewerage network and treatment process are not configured or designed to convey or treat. Trade effluent consents can contain stringent conditions to ensure certainty on the nature and amount of flow in order to mitigate and manage the risk. Details of the conditions that may be imposed on trade effluent discharges are set out in section 121(1)-(2) WIA, and can include, but are not limited to conditions about the type of sewers into which discharges can be made, the nature and composition of discharges, limits on the rate and volume of discharges, restrictions on when discharges can be made, payment of charges for discharges and provision of monitoring equipment etc.

² Section 118 WIA relates to the discharge of trade effluent and permits occupiers of trade premises to discharge trade effluent from their premises to the undertaker's sewers with the consent of the undertaker (s118(1) WIA). Trade Effluent is defined in s141(1) WIA as (a) any liquid...wholly or partly produced in the course of a trade or industry carried on at trade premises, and (b) in relation to trade premises, means any such liquid which is so produced in the course of any trade or industry carried out at those premises, but doesn't include domestic sewage. Trade premises is defined as any premises used or intended to be used for carrying on any trade or industry (s141(1) WIA).

TWUL has 2 months to consider whether to grant a consent under s118 WIA, and a person can refer the matter to Ofwat if TWUL does not respond within the relevant period of time (s122(1) WIA).

Deemed consent under Article 14 is inconsistent with section 106 and section 118 WIA, as under WIA deemed consent is only permitted in circumstances where WIA is prescriptive about the nature of the effluent that can be discharged, where the risk of unconsented discharge is low and where the undertaker has limited grounds for refusing consent.

In TWUL's opinion, Article 14 discharges will be akin to section 118 discharges i.e. it will be of an unknown quantity and quality which the sewerage network and treatment process are not necessarily configured or designed to convey or treat. The risk of discharge by deemed consent, without proper consideration of the risks, mitigation and controls on the discharge would be unnecessarily high, and the consequences of not managing the risk could include, but not be limited to the following:

- Health and safety risk to people working in the sewerage system, due to unexpected substances in the discharge or uncontrolled and unanticipated levels of discharge;
- Damage to the network and treatment processes due to unexpected substances in the discharge which may corrode apparatus or cause other physical damage that could lead to bursts, particularly if combined with heavy flows;
- Flooding of the environment and homes due to network incapacity caused by unexpected levels of flow or flow which a particular network may not be designed to accommodate. For example, if a significant amount of groundwater from tunnel dewatering is discharged in to a network designed to convey domestic sewage from homes, the discharge could create an incapacity in the network resulting in upstream flooding and pollution of the environment through discharges from manholes and flooding of homes because the sewerage network is unable to convey effluent away from homes for treatment;
- Pollution of the environment due to unexpected substances being discharged into the network which the treatment process is unable to satisfactorily treat before discharging it back in to the environment;
- Pollution of the environment due to polluted water being discharged in to surface water sewers, rather than to foul or combined sewers. Effluent from foul and combined sewers is conveyed to treatment works for treatment before being discharged into the environment. Surface water sewers discharge directly to watercourses without any treatment. As such, if polluted effluent is discharged into surface water sewers, this could pollute the environment.

TWUL is under a statutory duty under s94 WIA to ensure the area that it is responsible for continues to be effectually drained, and provisions such as s118 and s121 WIA give TWUL sufficient control over the network and what is discharged in to it, to ensure there is no breach of this duty.

TWUL can also be prosecuted by the Environment Agency under various pieces of legislation, including the Environmental Protection Act 1990 (s33), the Environmental Permitting Regulations 2010 (regulations 12 and 38) and the Salmon and Freshwater Fisheries Act 1975 (s4) if effluent from its sewers or treatment works cause pollution of the environment. Some offences are strict liability offences, which means that TWUL could be prosecuted whether or not it is to blame for the effluent escaping from the sewers or works, and some offences are punishable by unlimited fines.

TWUL is the statutory undertaker for the area in which the Silvertown Tunnel is to be constructed and is therefore responsible for the public sewerage network that Article 14 will

apply to. The provision about deemed consent has been included in Article 14 without the agreement of TWUL. In order to deal with its concerns TWUL proposes amending Article 14(4) as follows:

'(4) If a person who has received an application for consent under paragraph (3) or approval under paragraph (5)(a) fails to notify TfL of a decision before the end of the period of 28 days beginning with the date on which the application was made, that person is deemed to have ~~refused granted~~ consent or ~~given~~ approval, as the case may be.'

Equivalent provisions about deemed refusal of consent were included in the Thames Tideway Tunnel Order 2014 (Article 19(8)).

As the nature of the discharge is more akin to a s118 discharge than a s106 discharge, TWUL also suggests that it may be more appropriate to treat disputes as if they were disputes under s122 WIA, rather than as disputes under s106 WIA (Article 14(2)).

Article 29:

The Explanatory Memorandum to Article 29 says its purpose is to allow the relevant *'land...to be occupied and used temporarily while the works [for the authorised development] are carried out. This is land which is required during construction of the authorised development...'*

Article 29(6) states that before giving up possession of this land *'TfL must remove all temporary works and restore the land to the reasonable satisfaction of the owners of the land; but TfL is not required to: remove any measures installed over or around statutory undertaker's apparatus to protect that apparatus from the authorised development'* (29(6)(d)).

TWUL, who is a statutory undertaker for the purpose of the Order, owns water and waste water apparatus throughout the land affected by the Order, including the land to which Article 29 applies. The parties have not yet established which apparatus will need to be protected as a result of the authorised development.

TWUL anticipates protective measures 'over or around' apparatus to be measures such as installing concrete slabs / ground strengthening in the land over the apparatus to protect it while works go on above, or installing supportive structures beneath the apparatus. TWUL's concern relates to protective measures installed above apparatus, such as concrete slabs and coverings.

Under sections 158(1) and 159(1) WIA TWUL has, for the purpose of carrying out its functions and complying with its statutory duties, a statutory power to lay pipes and keep them in streets and other land, and to access those pipes for the purpose of inspection, maintenance, adjustment, repair or alteration.

Concrete slabs installed over apparatus would interfere with TWUL's ability to exercise its statutory powers under sections 158 and 159 WIA and could consequently have an impact on TWUL's ability to carry out its statutory functions. For example, having to remove protective measures before accessing apparatus for the purpose of maintenance and repair, will make it slower and more expensive to exercise these statutory powers. The ability to exercise these powers quickly and efficiently has a direct impact on TWUL's ability to provide an efficient and effective water supply and sewage disposal operation in accordance with its statutory obligations under sections 37 and 94 WIA. An interference with this power can have serious consequences:

- A leak on a water main may result in reduced pressure or no water in a particular area. The longer the leak takes to repair, the longer customers will be without water / without sufficient water;

- The location of a leak is normally easy to detect as the land immediately above and around it floods. However, a concrete slab over an area of leakage could disguise the location of the leak causing the investigation and repair to take longer, which will have an impact on service to customers;
- A failure to repair clean water apparatus quickly could impact the stability of the ground and structures on the ground around the leak, causing damage to property. A failure to repair foul water apparatus quickly could result in pollution incidents to nearby watercourses, the environment or groundwater.

Protective measures may be acceptable to mitigate the short term risk caused by construction work above apparatus, but once construction is complete, TWUL should not be obliged to suffer the ongoing interference that mitigation measures will have on TWUL's ability to exercise its statutory powers quickly and efficiently.

The equivalent of Article 29(6)(d) was not included within the Thames Tideway Tunnel Order 2014, so it is unclear whether this is a standard provision or something that the Applicant has included specifically within this Order.

TWUL proposes the following amendments to Article 29(6)(d):

'TfL is not required to-...

(d) remove any measures installed over or around statutory undertakers' apparatus to protect that apparatus from the authorised development unless the measures installed (a) cause any impact on the statutory undertaker's ability to maintain full and unhindered access to the apparatus or (b) cause the statutory undertaker to incur extra expense in accessing the apparatus for the purpose of complying with its statutory duties and/or (c) impact on the full and effective operation of the apparatus.'

Article 32:

TWUL has considered this matter with the Applicant and intends to withdraw its objection to the wording of Article 32, as equivalent protective provisions are already contained in Schedule 13 of the Order.

Schedule 13: Protective Provisions

Paragraph 2 - definitions

TWUL considers that the definition of 'alternative apparatus' in paragraph 2 should include the words 'and effective' after the words 'not less efficient'. Efficiency relates to cost and productivity, whereas effectiveness relates to ensuring the same output. TWUL's general duty under section 37(1) WIA refers to an 'efficient and economical' system and its general duty under section 94(1)(a) WIA refers to 'effectually' draining an area. In TWUL's opinion, alternative apparatus could be no less efficient than the asset which it replaces i.e. it might cost the same to maintain, but may be less effective, because it does not deal with the same quantity of water/effluent. On that basis, TWUL requests an amendment to paragraph 2 accordingly so that it is consistent with TWUL's obligations under WIA.

The definition of 'apparatus' in paragraph 2 does not reflect all the apparatus that is or could be vested in TWUL, and therefore which needs to be protected under the Protective Provisions.

The definition of water apparatus in 2(c) does not refer to 'accessories' to apparatus. Accessories are defined in section 219(1) WIA, and constitute the parts of the apparatus that are integral to the apparatus, such as manholes, ventilating shafts, stopcocks etc. Furthermore, the definition in 2(c) does not include apparatus which may be adopted by a water undertaker under section 51A WIA.

Equivalent provisions are provided for in 2(d) in relation to sewerage undertakers; see the reference to sections 102 and 104 WIA in 2(d), which are the provisions under which sewerage undertakers can adopt sewerage apparatus, and the reference to 'accessories'.

In relation to the definition in 2(d), it is not clear why 2(d)(i) only covers drains and works, and 2(d)(ii) only refers to sewers. Sewers, drains and disposal works can be vested in TWUL and can also be subject to vesting under section 102(1) and section 104(1) WIA. TWUL proposes the following amendment to paragraphs 2(c) and (d) for the purpose of clarity and consistency with WIA:

'(C) In the case of a statutory undertaker within paragraph (c) of the definition of that term

(i) any mains, pipes, ~~or~~ other water apparatus or accessories (as defined in section 219(1) of the Water Industry Act 1991) belonging to, ~~or~~ maintained or used by the statutory undertaker for the purposes of water supply; and

(ii) any water mains or service pipes which are the subject of a notice of intention to adopt under section 51A of the Water Industry Act 1991; and

(d) in the case of a sewerage-statutory undertaker within paragraph (d) of the definition of that term

(i) any sewer, drain or disposal works vested in the sewerage undertaker under the Water Industry Act 1991⁽²⁾; and

(ii) any sewer, drain or disposal works which ~~is so vested or is~~ are 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 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 (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;'

The Protective Provisions refer to 'plan and section' when describing the information that will be exchanged in relation to diverting apparatus. A plan and section show only what is to be constructed in outline terms. Method statements show how the work is to be carried out and are essential where work is being carried out close to or below apparatus to enable a proper assessment of the risks and effects of possible ground movement on the apparatus. Specifications would be required where the Applicant is constructing alternative apparatus to ensure compliance with TWUL standards.

TWUL therefore proposes that paragraph 2 should include a definition of 'plans', defined as 'means plans, sections, specifications, method statements and other appropriate documents required to enable the statutory undertaker to assess the impact on its apparatus' and for the words 'plans and sections' to be replaced throughout Part 1 with the defined term 'plans'.

Paragraph 4

Paragraph 4(1) relates to temporary stopping up, alteration or diversion of streets, and says that statutory undertakers will be at liberty at all times to take all necessary access across any such street and to execute and do all such works and things in, upon or under any such street as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the temporary stopping up, alteration or diversion was in that street.

Paragraph 4(1) does not refer to laying new apparatus. Under section 158 WIA TWUL has the power to lay a relevant pipe in, under or over any street and to keep that pipe there; to inspect, maintain, adjust, repair or alter any relevant pipe which is in, under or over any street; and to carry out any works requisite for, or incidental to, the purposes of any works described above, including breaking up or opening a street, tunnelling or boring under a street, breaking

up or opening a sewer, drain or tunnel, moving and removing earth and other materials (s158(1) WIA). This power applies to work in the street. Under section 159 WIA TWUL has the power to lay a relevant pipe in any land which is not in, under or over a street and to keep that pipe there; to inspect, maintain, adjust, repair or alter any relevant pipe which is in such land; and to carry out any works requisite for, or incidental to, the purposes of any works described above (s159(1)WIA). This power applies to work in land which is not a street e.g. a stopped up street.

The definition of relevant pipe includes but is not limited to water mains, resource mains, discharge or service pipes, sewers, disposal mains and lateral drains (s158(7) WIA).

The WIA has not been disapplied by the DCO and as such these provisions still have effect for the land and streets which are included within the Order land.

It is not clear why paragraph 4(1) specifically excludes the power to lay new apparatus, but for the avoidance of doubt, TWUL has the power (as detailed above) and must be able to exercise the power to lay new apparatus in order to comply with its various statutory duties. For example, under section 45(1) WIA TWUL is under a statutory duty to make a new connection between a person's premises and a water main for the purpose of providing those premises with a supply of water if a person requests such a supply. In order to comply with this duty TWUL would have to exercise its powers under sections 158 and 159 WIA to lay new apparatus. Where such a duty is owed under section 45 WIA and a breach of that duty causes loss or damage, the person requesting the connection can take proceedings against TWUL for recovery of any losses (s45(5)). As such, if TWUL was prevented from laying new apparatus where it is under an obligation to do so, it could face a claim for losses under section 45 WIA and could potentially be found to be in breach of its primary duties under s37(1)(a)WIA. This is just one example of the type a statutory duty that TWUL is obliged to comply with under WIA and the consequences of failing to comply with such a duty.

TWUL does not know whether it will need to lay new apparatus in any Order land, as the exercise of such powers is normally instigated by third parties and cannot be anticipated.

However, in order for paragraph 4(1) to be consistent with sections 158 and 159 WIA, it should include reference to TWUL's ability to lay new apparatus in order to comply with its statutory obligations. TWUL proposes that paragraph 4(1) should be amended to insert after '*was in that street*' the following words: '*or to lay new apparatus where necessary to enable the undertaker to comply with its statutory obligations*'.

Paragraph 5

As detailed above, TWUL's powers under WIA will not be disapplied by the DCO. As such, TWUL has powers under sections 158 and 159 WIA to keep apparatus in streets and other land.

Paragraph 5 states that the Applicant shall not acquire any apparatus otherwise than by agreement with the undertaker in question. However, it is not clear in what circumstances this clause would apply, as under the Order the Applicant only has a right to acquire land and rights in land. It does not have a right to acquire apparatus. In this regard, TWUL proposes the following amendment to clarify that the paragraph relates to the acquisition or extinguishment of land or rights in land required for the retention and maintenance of apparatus:

'Despite any provision of this Order or anything shown on the deposited plans, this Order does not authorise the acquisition or extinguishment of land or rights in land or override any interest in land owned by the statutory undertaker that is required for the retention and maintenance of any retained apparatus except with the statutory undertaker's agreement'

A similar provision has been included within the protective provisions for National Grid ("NG") in Schedule 13 Part 3 (paragraph 19), so it is unclear why this provision has not also been included in Schedule 13 Part 1.

For the avoidance of doubt, TWUL also proposes an amendment to paragraph 6(1) to clarify that TWUL's entitlement to keep apparatus in land *'must not be extinguished unless and until alternative apparatus has been constructed and is in operation..'*

Paragraphs containing notice provisions

Paragraphs 6(2), 8(1) and 8(5) refer to a 28 day notice period. 28 days is insufficient to arrange potentially significant infrastructure works. Arranging infrastructure works, including but not limited to the diversion of apparatus, especially large or strategic apparatus, such as the twin trunk rising mains that are currently located within the footprint of the tunnels and which will therefore need to be diverted, could take many years to arrange. For example, the timescale for diverting apparatus includes considering the requirement to divert, considering the options for diversion, design of the preferred option, tender, procurement, construction and commissioning.

Furthermore, the statutory notice period for laying a relevant pipe otherwise than in substitution for an existing pipe of the same description is 3 months (s159(5)(a)), and 42 days for the purpose of altering an existing pipe (s159(5)(b)). As such, depending on the required work, TWUL may have to give up to 3 months' notice to the landowner (this may not be the Applicant, as the Applicant has not arranged to acquire sufficient interest in land to accommodate diversion works) before it can exercise its powers (s159(5)). Additional notices will need to be given where works are in the street. TWUL may also have to coordinate works with local authorities/in line with other work being undertaken in the street, which would result in further delays.

The Applicant and TWUL's technical departments are already liaising about the options for apparatus that may need to be diverted and although TWUL believes that the timescale needs to at least accommodate the statutory notice periods set out in WIA, TWUL also requires comfort in the relevant paragraphs that the Applicant will consult about any required diversion or protection works and agree the technical solution before notice is served. Currently, the provisions are unclear and suggest that the Applicant could in practice serve only 28 days' notice of their requirements without any prior consultation or agreement as to their requirements.

In addition to imposing a requirement to consult and agree on technical solutions before serving notice, TWUL would like to increase the notice period to not less than 56 days, which would at least accommodate the statutory notice period for alteration of apparatus where necessary, and appears to be the standard timescale agreed with other statutory undertakers e.g. this timescale has been included in the protective provisions relating to NG in Part 3 of Schedule 13.

Paragraph 6

Paragraph 6(3) relates to rights and facilities for constructing alternative apparatus. It says that where the alternative apparatus is to be constructed elsewhere than in other land of the Applicant or if the Applicant cannot afford such rights and facilities, TWUL must, on receipt of written notice to that effect from the Applicant, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which alternative apparatus is to be constructed.

TWUL has statutory powers to lay, alter and maintain apparatus under sections 158 and 159 WIA as set out above. However, these powers are not unlimited in the sense that the powers are not exercisable in Crown land or in land owned by the undertakings listed in schedule 13 WIA without consent. Furthermore, although TWUL has the power to enter land where it has

served the relevant notice and that notice has expired, it is not entitled to enter land by force and land owners can refuse entry to land. This can result in having to obtain warrants of entry from Magistrates' Courts, with consequent unrecoverable costs and reputational issues.

TWUL is concerned that the Applicant has not fully considered the routes required for alternative apparatus nor has it arranged to acquire appropriate land to ensure that it has sufficient space for any required diversions. For example, the proposed options for diversion of the twin trunk rising mains, which currently lie within the footprint of the cut and cover section of the tunnel, lie partly outside the land which the Applicant will have any right to grant rights and facilities over. It is inevitable that without the statutory power that TWUL has to obtain rights and facilities in land in order to lay apparatus, that the Applicant will simply serve notice on TWUL and TWUL will then have to deal with the additional cost and reputational issues arising out of obtaining rights in land to divert apparatus for a project that has not been instigated by TWUL. It must be the case that the Applicant should ensure that it has adequate powers to enable all the works necessitated by the authorised development rather than rely on other parties to do this work for them.

TWUL is not aware of any diversion options which would require TWUL to use its compulsory purchase powers, but in any event TWUL objects to any requirement for it to use such powers for the purpose of the authorised development. Such an exclusion has been agreed with NG in paragraph 20(3) of Part 3 of Schedule 13.

TWUL would like to remove 6(3) from the protective provisions, and for the limits of land acquired or used by the Applicant as part of the authorised development to be reconsidered to account for any necessary diversion works. In the alternative, if the Examining Authority is not minded to accept this objection, TWUL should not be required to use its compulsory purchase powers and TWUL would expect the Applicant to use all reasonable endeavours and all powers available to them to acquire the relevant rights and facilities in land before serving notice. Also, as TWUL's powers are limited it should only be obliged to endeavour to obtain the necessary rights and facilities. TWUL proposes that the wording of paragraph 6(3) be replaced by the wording in paragraph 20(3) of Part 3 of Schedule 13, and that the following words are inserted as follows:

'...elsewhere than in other land of TfL, or if after using all reasonable endeavours and powers available to it, TfL is unable to afford such facilities and rights...'

6(5) gives the Applicant the power to carry out the construction or removal of TWUL apparatus. The Applicant must not be able to construct or remove apparatus without TWUL's consent and in accordance with TWUL's requirements. The apparatus will ultimately vest in TWUL for the purpose of carrying out TWUL's functions of water supply and sewage disposal, so TWUL must ensure that the apparatus has been constructed in accordance with all relevant industry standards and in accordance with TWUL's requirements and specifications to ensure it is safe to be used for future water supply or sewage disposal. For example, water mains and service pipes that are not constructed in accordance with industry standards relating to type of material used and design could have an impact on the quality of water being supplied through those pipes. In the worst case this could result in drinking water quality incidents which could have an impact on public health and for which TWUL could face prosecution. Similarly, poorly constructed sewers could result in groundwater contamination and potential pollution incidents, which in the worst case could have an adverse impact on the environment and for which TWUL could face prosecution.

TWUL proposes the following amendments to paragraph 6(5) to ensure that apparatus is constructed with TWUL's consent and in accordance with TWUL's requirements and specifications:

'Regardless of anything in sub-paragraph (5), if TfL gives notice in writing to the statutory undertaker in question that it desires itself to execute any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by TfL, that work, instead of being executed by the statutory undertaker, must may, subject to the written

consent of the statutory undertaker and in accordance with the statutory undertaker's requirements and specifications, be executed by TfL without unnecessary delay and without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

The purpose of paragraph 6(7) is to ensure that where the Applicant constructs or removes TWUL apparatus, that TWUL is able to ensure the apparatus has been constructed in accordance with TWUL standards and to ensure that the Applicant does not carry out any disconnection or connection works. Although the protection zone of 300mm is suitable for small apparatus, 600mm is more appropriate for larger apparatus, such as some of the apparatus which is likely to be diverted as part of the authorised development. As such, TWUL would like to amend the final part of this paragraph as follows: '*...within 600mm of the apparatus*'.

Paragraph 7

The wording of paragraph 7(2) is unclear, but TWUL believes the purpose is to ensure the arbitrator, as far as it is reasonable and practicable to do so, gives effect to the terms and conditions applicable to the apparatus that is to be diverted, when settling the terms and conditions for the alternative apparatus.

As detailed above TWUL has statutory powers under sections 158 and 159 WIA to access apparatus for the purpose of maintenance and repair and does not require separate rights and facilities to exercise these powers, unless consent is required because the land is owned by the Crown or an undertaking protected by Schedule 13 WIA. TWUL does not believe that any land within the Order land is owned by the Crown or is protected under Schedule 13.

In some cases easements are agreed for specific apparatus, but any rights agreed are never less favourable than TWUL's statutory rights under sections 158 and 159 WIA. If TWUL has additional rights over apparatus to be diverted, it would expect the arbitrator to ensure as far as possible that the rights applicable to alternative apparatus are no less favourable than its existing rights, as TWUL should not be put at a disadvantage in relation to the rights it has over certain apparatus, because the Applicant has requested a diversion. Similar wording has already been agreed for NG in Part 3 of Schedule 13. It is not clear why TWUL should be put at a disadvantage when other undertakers are not. TWUL proposes the following amendment to paragraph 7(2)(b):

'so far as it may be reasonable and practicable to do so in the circumstances of the particular case, ensure the facilities and rights are granted on such terms and conditions as are no less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed and in any event must not be any less favourable to the undertaker than the facilities and rights granted to the undertaker in accordance with its powers under s158 and s159 of the Water Industry Act 1991; give effect to the terms and conditions, if any, applicable to the apparatus constructed in, under, over or above the tunnels which the alternative apparatus is to be substituted.'

Paragraph 8

Paragraph 8(1) states that the Applicant must give notice to TWUL of any works of the type authorised by paragraph 6(2) of the protective provisions that are near to, or will or may affect any apparatus the removal of which has not been required by the Applicant. The works authorised by paragraph 6(2) are the removal of apparatus and construction of alternative apparatus. However, any works authorised under the Order could be near to, or may affect TWUL apparatus, as such TWUL requires notice of any works authorised under the Order that are near to or will be or may affect any apparatus which is not to be removed. For example tunnelling near to apparatus could destabilise the ground around the apparatus which could result in damage. If the Applicant's work could affect TWUL apparatus, TWUL would expect the Applicant to assess the potential impact of the works and work with TWUL

to ensure necessary measures are taken to protect the relevant apparatus. TWUL proposes the following amendment to paragraph 8(1):

'(1) Not less than ~~[56]28~~ days before starting the execution of any works of the type authorised by this Order referred to in paragraph 6(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by TfL under paragraph 6(2), TfL must submit to the statutory undertaker in question ~~a pPlans, section and description~~ of the works to be executed together with an assessment of the impact of the works on the apparatus and the measures that they propose to take to protect the apparatus.'

For the purpose of consistency with paragraph 6(5) above TWUL would like to insert an additional paragraph in paragraph 8 which clarifies that the Applicant must not carry out any work on TWUL apparatus without TWUL's consent. The reason for this addition is set out in our comments on paragraph 6(5) above. TWUL proposes the following addition:

'Nothing in this paragraph 8 entitles TfL to carry out any work to any apparatus except by written consent of the statutory undertaker.'

Paragraph 9

Paragraph 9(1) relates to reimbursement by the Applicant of any 'proper and reasonable expenses' incurred by TWUL in connection with the inspection, removal, alteration or protection of any apparatus. The words '*proper and reasonable*' suggest that the Applicant will challenge both the reasonableness of the expense and whether it was properly incurred. Paragraph 25 of Part 3 of Schedule 13, which relates to the protective provisions for NG, says that the Applicant will repay to NG all 'charges, costs and expenses reasonably incurred or any compensation properly paid', and does not contain any caveat as to whether expenses were properly incurred. It is not clear why this more beneficial wording has been included in the protective provisions for NG, but not for other undertakers. Furthermore, where TWUL is under a statutory duty to divert apparatus under s185 WIA, it is entitled to recover '*any expenses reasonably incurred in carrying out those works*' (s185(5) WIA).

TWUL should also be able to recover compensation properly paid in relation to any work it carries out under the Order, as under Schedule 12 WIA it is obliged to pay compensation to landowners and business owners in relation to specific losses incurred (diminution in value of land, disturbance and loss of business profits) in consequence of the exercise of its pipelaying powers under sections 158 and s159 WIA. As the Applicant has not acquired enough land to accommodate all required diversion routes, it is likely that TWUL will have to exercise its statutory powers under the above provisions. As such TWUL should be entitled to recover any compensation properly paid as a result of exercising such powers from the Applicant.

In TWUL's view, the protective provisions relating to recovery of expenses should be consistent for all undertakers, should be consistent with TWUL's statutory right to recover sums under s185(5) and should cover TWUL's obligations to pay compensation under Schedule 12 WIA. TWUL proposes the following amendment to paragraph 9(1):

'(1) Subject to the following provisions of this paragraph, TfL must repay to the statutory undertaker in question all expenses, costs and charges reasonably incurred, and any compensation properly paid~~the proper and reasonable expenses incurred~~ by that statutory undertaker in, or in connection with, the inspection, removal, alteration or protection of any apparatus.'

Paragraphs 9(3) and (4) specify when costs must be deducted from the costs payable to the undertaker under sub-paragraph 1. TWUL would like to amend sub-paragraphs 3 and 4 to add clarity to when costs will not be deducted for the avoidance of doubt. TWUL's proposed amendments are as follows:

At the end of paragraph 9(3)(b), TWUL would like to add the following wording:

'sub-paragraph (1) is to be reduced by the amount of that excess, except where it is not possible in the circumstances to lay apparatus of the same type, capacity and dimensions, or place at the same depth as the existing apparatus, in which case the full costs must be borne by TfL.

In paragraph 9(4)(b), TWUL would like to replace the word cable with pipe, and add an additional paragraph at 9(4)(c):

'the inclusion of accessories including but not limited to manholes and valves necessary to comply with modern design standards, operational standards, health and safety requirements or other standards, requirements or laws, must not be treated as placing apparatus of a better type, greater capacity or greater dimensions than the existing apparatus.

Paragraph 10

In paragraph 25 of Part 3 of Schedule 13 the Applicant has given NG a comprehensive indemnity in relation to damage to apparatus or alternative apparatus, damage to NG property or any interruption of services or supply caused by reason of or in consequence of any works authorised under Part 3 or in consequence of the construction, use, maintenance or failure of the authorised development.

TWUL has not been provided with any such indemnity by the Applicant, despite the fact that it is also a statutory undertaker whose apparatus, alternative apparatus or property could be damaged by works carried out under the Order or whose supply and services could be interrupted by reason of or in consequence of the construction, use, maintenance or failure of the authorised development.

As the risk to apparatus, property and services are the same for NG as they are for TWUL, TWUL would like the wording of paragraph 10 to be replaced with the wording for paragraph 25, so that TWUL has parity with the indemnity provisions afforded to other statutory undertakers. The Port of London Authority has also been provided with an indemnity under paragraph 43 of Part 4 of Schedule 13.

Other issues

TWUL holds freehold interest in land in plots 05-033 and 06-078 which are to be temporarily occupied by the Applicant for the purpose of providing working space and construction compounds and for the purpose of improving associated infrastructure. The plots contain a headwall / sewer outfall and river wall, with hardstanding and access. The headwall / sewer outfall is included with the definition of 'apparatus' in paragraph 2 of Schedule 13, and as such is protected by the protective provisions. However, for the avoidance of doubt, TWUL will continue to require access in accordance with its freehold interests, and requires the Applicant to make any necessary arrangements with TWUL during the period of temporary occupation to ensure that access rights in relation to both interests in land are maintained.

18.— Orders for securing compliance with certain provisions.

(1) Subject to subsection (2) and sections 19 and 20 below, where in the case of any company holding an appointment under Chapter I of this Part [or [any person holding] a licence under Chapter 1A of this Part] the Secretary of State or [the Authority] is satisfied—

(a) that that company [or that person] is contravening—

(i) any condition of the company's appointment [or [the person's] licence] in relation to which [he or it] is the enforcement authority; or

(ii) any statutory or other requirement which is enforceable under this section and in relation to which [he or it] is the enforcement authority;

or

(b) that that company [or that person] [is likely to contravene any such condition or requirement],

[he or it] shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

(1A) Subject to subsection (2) and sections 19 and 20 below, where—

(a) in the case of any company holding an appointment under Chapter 1 of this Part, the Secretary of State or the Authority is satisfied that the company—

(i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of subsection (1) above by [a person] 10 holding a licence under Chapter 1A of this Part; or

(ii) is likely to cause or contribute to any such contravention; or

(b) in the case of [any person] 11 holding a licence under Chapter 1A of this Part, the Secretary of State or the Authority is satisfied that [the person] 12 –

(i) is causing or contributing to a contravention of a condition or requirement such as is referred to in paragraph (a)(i) or (ii) of subsection (1) above by a company holding an appointment under Chapter 1 of this Part; or

(ii) is likely to cause or contribute to any such contravention,

he or it shall by a final enforcement order make such provision as is requisite for the purpose of securing compliance with that condition or requirement.

(2) Subject to section 19 below, where in the case of any company holding an appointment under Chapter I of this Part [or [any person holding] a licence under Chapter 1A of this Part] —

(a) it appears to the Secretary of State or [the Authority] as mentioned in paragraph (a) or (b) of subsection (1) [or (1A)] above; and

(b) it appears to [him or it] that it is requisite that a provisional enforcement order be made,

[he or it] may (instead of taking steps towards the making of a final order) by a provisional enforcement order make such provision as appears to [him or it] requisite for the purpose of securing compliance with the condition or requirement in question.

(3) In determining for the purposes of subsection (2)(b) above whether it is requisite that a provisional enforcement order be made, the Secretary of State or, as the case may be, [the Authority] shall have regard, in particular, to the extent to which any person is likely to sustain loss or damage in consequence of anything which, in contravention of any condition or of any statutory or other

requirement enforceable under this section, is likely to be done, or omitted to be done, before a final enforcement order may be made.

(4) Subject to sections 19 and 20 below, where the Secretary of State or [the Authority] has made a provisional enforcement order, [he or it] shall confirm it, with or without modifications, if—

(a) [he or it] is satisfied that the company to which the order relates—

(i) is contravening any condition or statutory or other requirement in relation to which [he or it] is the enforcement authority; or

(ii) is likely to contravene any such condition or requirement; [or]

(iii) is causing or contributing to a contravention of any such condition or requirement; or

(iv) is likely to cause or contribute to any such contravention;

(b) the provision made by the order (with any modifications) is requisite for the purpose of securing compliance with that condition or requirement.

(5) An enforcement order—

(a) shall require the company to which it relates (according to the circumstances of the case) to do, or not to do, such things as are specified in the order or are of a description so specified;

(b) shall take effect at such time, being the earliest practicable time, as is determined by or under the order; and

(c) may be revoked at any time by the enforcement authority who made it.

(6) For the purposes of this section and the following provisions of this Act—

(a) the statutory and other requirements which shall be enforceable under this section in relation to a company holding an appointment under Chapter I of this Part [or [a person holding] a licence under Chapter 1A of this Part] shall be such of the requirements of any enactment or of any subordinate legislation as—

(i) are imposed in consequence of that appointment [or licence] ; and

(ii) are made so enforceable by that enactment or subordinate legislation;

(b) [the Authority] shall be the enforcement authority in relation to the conditions of an appointment under Chapter I of this Part [or of a licence under Chapter 1A of this Part]; and

(c) the enforcement authority in relation to each of the statutory and other requirements enforceable under this section shall be the Secretary of State, [the Authority] or either of them, according to whatever provision is made by the enactment or subordinate legislation by which the requirement is made so enforceable.

(7) In this section and the following provisions of this Chapter—

“enforcement order” means a final enforcement order or a provisional enforcement order;

“final enforcement order” means an order under this section other than a provisional enforcement order;

“provisional enforcement order” means an order under this section which, if not previously confirmed in accordance with subsection (4) above, will cease to have effect at the end of such period (not exceeding three months) as is determined by or under the order.

(8) Where any act or omission—

(a) constitutes a contravention of a condition of an appointment under Chapter 1 of this Part or of a condition of a licence under Chapter 1A of this Part or of a statutory or other requirement enforceable under this section; or

(b) causes or contributes to a contravention of any such condition or requirement,

the only remedies for, or for causing or contributing to, that contravention (apart from those available by virtue of this section) shall be those for which express provision is made by or under any enactment and those that are available in respect of that act or omission otherwise than by virtue of its constituting, or causing or contributing to, such a contravention.

22A Penalties

(1) Where the Authority is satisfied—

(a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—

(i) has contravened or is contravening any condition of the appointment;

(ii) has caused or contributed to, or is causing or contributing to, a contravention by a [person] holding a licence under Chapter 1A of this Part of any condition of the licence; or

(iii) has failed or is failing to achieve any standard of performance prescribed under section 38(2) or 95(2) below; or

(b) in the case of any [person] holding a licence under Chapter 1A of this Part, that the [person] —

(i) has contravened or is contravening any condition of the licence; or

(ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any condition of the appointment,

the Authority may, subject to section 22C below, impose on [that company or that person] a penalty of such amount as is reasonable in all the circumstances of the case.

(2) Where the Authority, the Secretary of State or the Assembly is satisfied—

(a) in the case of any company holding an appointment under Chapter 1 of this Part, that the company—

(i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or

(ii) has caused or contributed to, or is causing or contributing to, a contravention by a [person] holding a licence under Chapter 1A of this Part of any such requirement; or

(b) in the case of any [person] holding a licence under Chapter 1A of this Part, that the [person] —

(i) has contravened or is contravening any statutory or other requirement which is enforceable under section 18 above and in relation to which he or it is the enforcement authority; or

(ii) has caused or contributed to, or is causing or contributing to, a contravention by a company holding an appointment under Chapter 1 of this Part of any such requirement,

he or it may, subject to section 22C below, impose on [that company or that person] a penalty of such amount as is reasonable in all the circumstances of the case.

(3) In a case in which–

- (a) subsection (1) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection, or
- (b) subsection (2) above applies by virtue of paragraph (a)(ii) or (b)(ii) of that subsection,

references in the following provisions of this section and sections 22B and 22C below to a contravention include references to causing or contributing to a contravention.

(4) Before imposing a penalty on a [person] under subsection (1) or (2) above the Authority, the Secretary of State or the Assembly (the “enforcement authority”) shall give notice–

- (a) stating that it proposes to impose a penalty and the amount of the penalty proposed to be imposed;
- (b) setting out the condition, requirement or standard of performance in question;
- (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of a penalty and the amount of the penalty proposed; and
- (d) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed penalty may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(5) Before varying any proposal stated in a notice under subsection (4)(a) above the enforcement authority shall give notice–

- (a) setting out the proposed variation and the reasons for it; and
- (b) specifying the period (not being less than twenty-one days from the date of publication of the notice) within which representations or objections with respect to the proposed variation may be made,

and shall consider any representations or objections which are duly made and not withdrawn.

(6) As soon as practicable after imposing a penalty [on a person] , the enforcement authority shall give notice–

- (a) stating that he or it has imposed a penalty on the [person] and its amount;
- (b) setting out the condition, requirement or standard of performance in question;
- (c) specifying the acts or omissions which, in the opinion of the enforcement authority, constitute the contravention or failure in question and the other facts which, in the opinion of the enforcement authority, justify the imposition of the penalty and its amount; and
- (d) specifying a date, no earlier than the end of the period of forty-two days from the date of service of the notice on the [person], by which the penalty is required to be paid.

(7) The [person on whom the penalty has been imposed] may, within twenty-one days of the date of service [...] of a notice under subsection (6) above, make an application to the enforcement authority for him or it to specify different dates by which different portions of the penalty are to be paid.

(8) Any notice required to be given under this section shall be given–

- (a) by publishing the notice in such manner as the enforcement authority considers appropriate for the purpose of bringing the matters to which the notice relates to the attention of persons likely to be affected by them;

(b) by serving a copy of the notice on the [person on whom the penalty is to be or has been imposed];

(c) by serving a copy of the notice on the Council; and

(d) where the notice is given by the Secretary of State or the Assembly, by serving a copy of the notice on the Authority.

(9) Any sums received by the enforcement authority by way of penalty under this section shall be paid into the Consolidated Fund.

(10) The power of the enforcement authority to impose a penalty under this section is not exercisable in respect of any contravention or failure before the commencement of this section.

(11) No penalty imposed by an enforcement authority under this section may exceed [—]

(a) 10% of the turnover of the company, or

(b) in a case where the person on whom the penalty is imposed is not a company, 10% of the turnover of the business of the person,

(determined in accordance with provisions specified in an order made, after consulting the Assembly, by the Secretary of State).

(12) The power of the Secretary of State to make an order under subsection (11) above shall be exercisable by statutory instrument subject to annulment in pursuance of a resolution of either House of Parliament.

(13) Before imposing a penalty under this section, the Authority shall consider whether it would be more appropriate to proceed under the Competition Act 1998.

(14) The Authority shall not impose a penalty under this section if it considers that it would be more appropriate to proceed under the Competition Act 1998.

37.— General duty to maintain water supply system etc.

(1) It shall be the duty of every water undertaker to develop and maintain an efficient and economical system of water supply within its area and to ensure that all such arrangements have been made—

(a) for providing supplies of water to premises in that area and for making such supplies available to persons who demand them; and

(b) for maintaining, improving and extending the water undertaker's water mains and other pipes,

as are necessary for securing that the undertaker is and continues to be able to meet its obligations under this Part.

(2) The duty of a water undertaker under this section shall be enforceable under section 18 above—

(a) by the Secretary of State; or

(b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by [the Authority].

(3) The obligations imposed on a water undertaker by the following Chapters of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this section or section 38 below and shall not be in any way qualified by any such provision.

45.— Duty to make connections with main.

(1) Subject to the following provisions of this section and to sections 46 and 47 below, it shall be the duty of a water undertaker (in accordance with section 51 below) to make a connection under this section where the owner or occupier of any premises [...] which—

(a) consist in the whole or any part of a building; or

(b) are premises on which any person is proposing to erect any building or part of a building,

serves a notice on the undertaker requiring it, for the purpose of providing a supply of water for domestic purposes to that building or part of a building, to connect a service pipe to those premises with one of the undertaker's water mains.

(1ZA) The duty to make a connection under this section does not apply in relation to premises in a retail exit area that are not household premises.

(1A) In relation to service pipes which do not belong to or fall to be laid by the undertaker—

(a) subsection (1) above is subject to section 51D(1) below; and

(b) any such service pipe which is to vest in the undertaker by virtue of an agreement under section 51A below shall be connected to one of the undertaker's water mains subject to and in accordance with the terms of that agreement.

(2) Where a notice has been served for the purposes of this section, the duty imposed by subsection (1) above shall be a duty, at the expense of the person serving the notice, to make the connection required by the notice if—

(a) the main with which the service pipe is required to be connected is neither a trunk main nor a water main which is or is to be used solely for the purpose of supplying water otherwise than for domestic purposes; and

(b) such conditions as the undertaker may have imposed under sections 47 to 50 below have been satisfied;

and, subject to section 51 below, that duty shall arise whether or not the service pipe to which the notice relates has been laid when the notice is served.

(3) A notice for the purposes of this section—

(a) shall be accompanied or supplemented by all such information as the undertaker may reasonably require; and

(b) if the notice has effect so that a requirement is imposed on the undertaker by virtue of section 46(4) below, shall set out the matters that have given rise to the imposition of that requirement;

but, subject to section 51(5) below and without prejudice to the effect (if any) of any other contravention of this subsection, a failure to provide information in pursuance of the obligation to supplement such a notice shall not invalidate that notice.

(4) The duty imposed on a water undertaker by this section shall be owed to the person who served the notice by virtue of which the duty arises.

(5) Where a duty is owed by virtue of subsection (4) above to any person, any breach of that duty which causes that person to sustain loss or damage shall be actionable at the suit of that person; but, in any proceedings brought against a water undertaker in pursuance of this subsection, it shall be a defence for the undertaker to show that it took all reasonable steps and exercised all due diligence to avoid the breach.

(6) Where a water undertaker carries out any works which it is its duty under this section to carry out at another person's expense, the undertaker shall be entitled to recover from that person an amount equal to the expenses reasonably incurred by the undertaker in carrying out the works.

(6A) Any dispute between a water undertaker and any other person as to whether the expenses were incurred reasonably may be referred to [the Authority] for determination under section 30A above by either party to the dispute.

(7) Nothing in this section or in sections 46 to 51 below shall impose any duty on a water undertaker to connect a service pipe to any premises with a service pipe to any other premises.

(8) In the following provisions of this Chapter a notice served for the purposes of this section is referred to as a connection notice.

51A Agreements to adopt water main or service pipe at future date

(1) Subject to subsections (2) and (10) below, a water undertaker may agree with any person constructing or proposing to construct—

- (a) any water main; or
- (b) any service pipe,

that, if the water main or service pipe is constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the water main or (as the case may be) so much of the service pipe as the undertaker could otherwise, by virtue of sections 45 to 51 above, be required to lay, to be vested in that undertaker.

(2) Subsection (1) above shall not apply in the case of water mains or service pipes which are to be used (in whole or in part) for the purpose of supplying water other than for domestic purposes, but—

- (a) nothing in this section shall prevent a water undertaker from agreeing apart from this section to declare any such water main or service pipe (or a part of it, as specified in the agreement) to be vested in the undertaker; and
- (b) such a declaration shall take effect as a declaration made under this Chapter.

(3) A person constructing or proposing to construct a water main or a service pipe to which subsection (1) above applies may make an application in writing to a water undertaker requesting the undertaker to make an agreement under this section.

(4) An application under subsection (3) above shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but subject to subsection (5) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(5) Where—

- (a) a person who has made an application to a water undertaker under subsection (3) above has failed to comply with his obligation under this section to supplement that application with information required by the undertaker; and
- (b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of section 51B below, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its response to the application until a reasonable time after the required information is provided.

(6) In deciding whether or on what terms to grant an application under subsection (3) above, a water undertaker shall have regard in particular to any effect or potential effect on the quality of water supplies and to any increased danger to life or health which it considers may result.

(7) The terms of an agreement under subsection (1) above relating to a water main may, in particular, include terms—

(a) for the provision (at the expense of the person constructing or proposing to construct the water main) by—

- (i) that person; or
- (ii) the water undertaker,

of such associated infrastructure at or downstream of the point of connection with the undertaker's supply system as it is necessary to provide in consequence of incorporating the new water main into that system;

(b) providing that, if the water main and the associated infrastructure are constructed in accordance with the terms of the agreement, the undertaker will, in addition to declaring the water main to be vested in it, declare the associated infrastructure to be so vested;

(c) where the undertaker considers that the proposed main is, or is likely to be, needed for the provision of water supply services in addition to those for which the person is proposing to construct the main—

- (i) requiring that person to construct the main in a manner differing, as regards material or size of pipes, depth or otherwise, from the manner in which that person proposes, or could otherwise be required by the undertaker, to construct it; and
- (ii) providing for the repayment by the undertaker of any extra expense reasonably incurred by that person in complying with that requirement;

(d) for the connection of the new water main to the undertaker's existing supply system at the point or points specified in the agreement;

(e) for any service pipes which the person constructing or proposing to construct the new water main proposes to connect to that main to be constructed in accordance with the terms of the agreement and, subject to that, to be vested in the undertaker at the same time as the main.

(8) The terms of an agreement under subsection (1) above relating to a service pipe may, in particular, include terms—

- (a) for the connection of the new service pipe to the undertaker's existing supply system at the point or points specified in the agreement;
- (b) for such requirements of the kind referred to in section 47(2) above as may be applicable to be complied with before connection takes place.

(9) An agreement made under this section by a water undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises connected or to be connected with the water main or service pipe to which it relates.

(10) A water undertaker shall not make an agreement under this section with respect to a water main or a service pipe situated within the area of another water undertaker, until either—

- (a) that other undertaker has consented in writing to the making of the agreement; or
- (b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.

94.— General duty to provide sewerage system.

(1) It shall be the duty of every sewerage undertaker—

(a) to provide, improve and extend such a system of public sewers (whether inside its area or elsewhere) and so to cleanse and maintain those sewers [and any lateral drains which belong to or vest in the undertaker] as to ensure that that area is and continues to be effectually drained; and

(b) to make provision for the emptying of those sewers and such further provision (whether inside its area or elsewhere) as is necessary from time to time for effectually dealing, by means of sewage disposal works or otherwise, with the contents of those sewers.

(2) It shall be the duty of a sewerage undertaker in performing its duty under subsection (1) above to have regard—

(a) to its existing and likely future obligations to allow for the discharge of trade effluent into its public sewers; and

(b) to the need to provide for the disposal of trade effluent which is so discharged.

(3) The duty of a sewerage undertaker under subsection (1) above shall be enforceable under section 18 above—

(a) by the Secretary of State; or

(b) with the consent of or in accordance with a general authorisation given by the Secretary of State, by [the Authority].

(4) The obligations imposed on a sewerage undertaker by the following Chapters of this Part, and the remedies available in respect of contraventions of those obligations, shall be in addition to any duty imposed or remedy available by virtue of any provision of this section or section 95 below and shall not be in any way qualified by any such provision.

(5) In this section "trade effluent" has the same meaning as in Chapter III of this Part.

102.— Adoption of sewers and disposal works.

(1) Subject to the following provisions of this section and to sections 103, 105 and 146(3) below, a sewerage undertaker may at any time declare that—

(a) any sewer which is situated within its area or which serves the whole or any part of that area; [...]

(aa) any lateral drain which communicates or is to communicate with a public sewer which—

(i) is so situated or serves the whole or any part of that area; and

(ii) is vested in that undertaker; or

(b) any sewage disposal works which are so situated or which serve the whole or any part of that area,

shall, as from such date as may be specified in the declaration, become vested in the undertaker.

(2) The owner, or any of the owners, of any sewer [, lateral drain] or sewage disposal works with respect to which a sewerage undertaker might make a declaration under this section may make an application to that undertaker requesting it to make a declaration under this section with respect to the sewer, [lateral drain] or works.

(3) A declaration or application under this section may be made with respect to a part only of a sewer.

(4) A sewerage undertaker which proposes to make a declaration under this section—

(a) shall give notice of its proposal to the owner or owners of the sewer [, lateral drain] or works in question; and

(b) shall take no further action in the matter until two months have elapsed without an appeal against the proposal being lodged under section 105 below or, as the case may be, until any appeal so lodged has been determined.

(5) A sewerage undertaker, in deciding whether a declaration should be made under this section, shall have regard to all the circumstances of the case and, in particular, to the following considerations, that is to say—

(a) whether the sewer or works in question is or are adapted to, or required for, any general system of sewerage or sewage disposal which the undertaker has provided, or proposes to provide, for the whole or any part of its area;

(b) whether the sewer [or lateral drain] is constructed under a highway or under land reserved by a planning scheme for a street;

(c) the number of buildings which the sewer [or lateral drain] is intended to serve, and whether, regard being had to the proximity of other buildings or the prospect of future development, it is likely to be required to serve additional buildings;

(d) the method of construction and state of repair of the sewer [, lateral drain] or works; and

(e) in a case where an owner objects, whether the making of the proposed declaration would be seriously detrimental to him.

(6) Any person who immediately before the making of a declaration under this section was entitled to use the sewer [or lateral drain] in question shall be entitled to use it, or any sewer [or lateral drain] substituted for it, to the same extent as if the declaration had not been made.

(7) No declaration may be made under this section in respect of any sewer or works the construction of which was completed before 1st October 1937.

104.— Agreements to adopt sewer, drain or sewage disposal works, at future date

(1) Subject to subsection (7) and section 146(3) below, a sewerage undertaker may agree with—

(a) any person constructing or proposing to construct—

(i) any sewer;

(ii) any drain which is intended to communicate with a public sewer vested in that undertaker; or

(iii) any sewage disposal works; or

(b) any person at whose expense the undertaker is, by virtue of an agreement under section 160 below, to carry out work in connection with the construction of such a drain or sewer,

that, if the sewer, drain or sewage disposal works is or are constructed in accordance with the terms of the agreement, the undertaker will, upon completion of the work, at some specified date or on the happening of some future event, declare the sewer or such part of the drain as constitutes the lateral drain or the works (as the case may be) to be vested in that undertaker.

(2) A person [mentioned in paragraph (a) or (b) of subsection (1) above] may make an application to a sewerage undertaker requesting the undertaker to make an agreement under this section.

(3) An application under subsection (2) above shall be accompanied and supplemented by all such information as the undertaker may reasonably require; but, subject to subsection (4) below and without prejudice to the effect (if any) of any other contravention of the requirements of this section in relation to such an application, a failure to provide information in pursuance of the obligation to supplement such an application shall not invalidate the application.

(4) Where—

(a) a person who has made an application to a sewerage undertaker under subsection (2) above has failed to comply with his obligation under this section to supplement that application with information required by the undertaker; and

(b) that requirement was made by the undertaker at such a time before the end of the period within which the undertaker is required, by virtue of section 105 below, to respond to the application as gave that person a reasonable opportunity to provide the required information within that period,

the undertaker may delay its response to the application until a reasonable time after the required information is provided.

(5) Any agreement made under this section by a sewerage undertaker shall be enforceable against the undertaker by the owner or occupier for the time being of any premises served by the sewer [, lateral drain] or works to which it relates.

(6A) Without limiting the terms which may be included in an agreement under this section, the terms of an agreement which relates to a drain may include in particular—

(a) identification of that part of the drain which constitutes the lateral drain for the purposes of the agreement and, in particular, the point or points of connection between that part and the remainder of the drain;

(b) a requirement for the installation of an inspection chamber, at the expense of the person with whom the sewerage undertaker is to make the agreement, at a place specified in the agreement;

(c) provision, if the inspection chamber is constructed in accordance with the terms of the agreement, for the undertaker to declare that the inspection chamber be vested in the undertaker at the same time as the lateral drain; and

(d) provision for the lateral drain, once vested in the undertaker, to communicate with a public sewer at the place or places specified in the agreement.

(7) A sewerage undertaker shall not make an agreement under this section with respect to—

(a) a sewer, drain or sewage disposal works situated within the area of another sewerage undertaker; or

(b) a drain which is intended to communicate with a sewer which—

(i) is so situated; or

(ii) is vested in another sewerage undertaker,

until one of the conditions mentioned in subsection (8) below is satisfied.

(8) The conditions are—

(a) that other undertaker has consented to the making of the agreement; or

(b) the Secretary of State, on an application made to him, has dispensed with the necessity for such consent, either unconditionally or subject to such conditions as he may think fit to impose.

(9) Undertakers shall have regard to any guidance about agreements under this section issued by—

(a) the Secretary of State, in relation to undertakers whose areas are wholly or mainly in England, or

(b) the Welsh Ministers, in relation to undertakers whose areas are wholly or mainly in Wales.

106.— Right to communicate with public sewers.

(1) Subject to the provisions of this section—

- (a) the owner or occupier of any premises, or
- (b) the owner of any private sewer which drains premises,

shall be entitled to have his drains or sewer communicate with the public sewer of any sewerage undertaker and thereby to discharge foul water and surface water from those premises or that private sewer.

(1A) In this section, and in sections 107 to 109, 111, 113 to 116, 118, 119, 124, 127, 139 and 146 below—

- (a) references (however expressed) to a public sewer include a public lateral drain which satisfies sewer standards; and
- (b) for the purposes of paragraph (a) above—
 - (i) a “public lateral drain” is a lateral drain which either belongs to the sewerage undertaker or is vested in the sewerage undertaker by virtue of a declaration made under section 102 above or under an agreement made under section 104 above; and
 - (ii) “sewer standards” means such standards of construction and repair as the undertaker would require if the public lateral drain or part of it were to become a public sewer.

(2) Subject to the provisions of Chapter III of this Part, nothing in subsection (1) above shall entitle any person—

- (a) to discharge directly or indirectly into any public sewer—
 - (i) any liquid from a factory, other than domestic sewage or surface or storm water, or any liquid from a manufacturing process; or
 - (ii) any liquid or other matter the discharge of which into public sewers is prohibited by or under any enactment; or
- (b) where separate public sewers are provided for foul water and for surface water, to discharge directly or indirectly—
 - (i) foul water into a sewer provided for surface water; or
 - (ii) except with the approval of the undertaker, surface water into a sewer provided for foul water; or
- (c) to have his drains or sewer made to communicate directly with a storm-water overflow sewer.

(3) A person desirous of availing himself of his entitlement under this section shall give notice of his proposals to the sewerage undertaker in question.

(4) At any time within twenty-one days after a sewerage undertaker receives a notice under subsection (3) above, the undertaker may by notice to the person who gave the notice refuse to permit the communication to be made, if it appears to the undertaker that the mode of construction or condition of the drain or sewer [...]

- (a) does not satisfy the standards reasonably required by the undertaker; or
- (b) is such that the making of the communication would be prejudicial to the undertaker's sewerage system.

(5) For the purpose of examining the mode of construction and condition of a drain or sewer to which a notice under subsection (3) above relates a sewerage undertaker may, if necessary, require it to be laid open for inspection.

(5A) Where the sewer or drain satisfies the standards reasonably required by it, a sewerage undertaker may, as a condition of permitting the communication to be made, require that the sewer or that part of the drain forming the lateral drain be vested in it by virtue of a declaration under section 102 above.

(6) Any question arising under subsections [(3) to (5A)] above between a sewerage undertaker and a person proposing to make a communication as to—

(a) the reasonableness of the undertaker's refusal to permit a communication to be made; or

(b) as to the reasonableness of any requirement under subsection (5) [or (5A)] above,

may, on the application of that person, be determined by [[the Authority] 8 under section 30A above] [(and, accordingly, section 105 above shall not apply to any requirement under subsection (5A) above)].

(8) Where a person proposes under this section to make a communication between a drain or sewer and such a public sewer in Greater London as is used for the general reception of sewage from other public sewers and is not substantially used for the reception of sewage from private sewers and drains—

(a) the grounds on which a sewerage undertaker may refuse to permit the communication shall be such grounds as the undertaker thinks fit; and

(b) no application to [the Authority] may be made under subsection (6) above in respect of any refusal under this subsection.

(9) In this section "factory" has the same meaning as in the Factories Act 1961.

109. - Unlawful communications

(1) Any person who causes a drain or sewer to communicate with a public sewer-

(a) in contravention of any of the provisions of section 106 or 108 above; or

(b) before the end of the period mentioned in subsection (4) of that section 106, shall be guilty of an offence and liable, on summary conviction, to a fine not exceeding level 4 on the standard scale.

(2) Whether proceedings have or have not been taken by a sewerage undertaker in respect of an offence under this section, such an undertaker may –

(a) close any communication made in contravention of any of the provisions of section 106 or 108 above; and

(b) recover from the offender any expenses reasonably incurred by the undertaker in so doing.

(3) Sections 291, 293 and 294 of the Public Health Act 1936 (which provide for the means of, and for limitations on, the recovery of expenses incurred by a local authority) shall apply in relation to the recovery by a sewerage undertaker of any sums under this section as they apply in relation to the recovery of expenses under that Act by a local authority.

118.— Consent required for discharge of trade effluent into public sewer.

(1) Subject to the following provisions of this Chapter, the occupier of any trade premises in the area of a sewerage undertaker may discharge any trade effluent proceeding from those premises into the undertaker's public sewers if he does so with the undertaker's consent.

(2) Nothing in this Chapter shall authorise the discharge of any effluent into a public sewer otherwise than by means of a drain or sewer.

(3) The following, that is to say—

- (a) the restrictions imposed by paragraphs (a) and (b) of section 106(2) above; and
- (b) section 111 above so far as it relates to anything falling within paragraph (a) or (b) of subsection (1) of that section,

shall not apply to any discharge of trade effluent which is lawfully made by virtue of this Chapter.

(4) Accordingly, subsections (3) to (8) of section 106 above and sections 108 and 109 above shall have effect in relation to communication with a sewer for the purpose of making any discharge which is lawfully made by virtue of this Chapter as they have effect in relation to communication with a sewer for the purpose of making discharges which are authorised by subsection (1) of section 106 above.

(5) If, in the case of any trade premises, any trade effluent is discharged without such consent or other authorisation as is necessary for the purposes of this Chapter, the occupier of the premises shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum; and
- (b) on conviction on indictment, to a fine.

121.— Conditions of consent.

(1) The power of a sewerage undertaker, on an application under section 119 above, to give a consent with respect to the discharge of any trade effluent shall be a power to give a consent either unconditionally or subject to such conditions as the sewerage undertaker thinks fit to impose with respect to—

- (a) the sewer or sewers into which the trade effluent may be discharged;
- (b) the nature or composition of the trade effluent which may be discharged;
- (c) the maximum quantity of trade effluent which may be discharged on any one day, either generally or into a particular sewer; and
- (d) the highest rate at which trade effluent may be discharged, either generally or into a particular sewer.

(2) Conditions with respect to all or any of the following matters may also be attached under this section to a consent to the discharge of trade effluent from any trade premises—

- (a) the period or periods of the day during which the trade effluent may be discharged from the trade premises into the sewer;
- (b) the exclusion from the trade effluent of all condensing water;
- (c) the elimination or diminution, in cases falling within subsection (3) below, of any specified constituent of the trade effluent, before it enters the sewer;
- (d) the temperature of the trade effluent at the time when it is discharged into the sewer, and its acidity or alkalinity at that time;

(e) the payment by the occupier of the trade premises to the undertaker of charges for the reception of the trade effluent into the sewer and for the disposal of the effluent;

(f) the provision and maintenance of such an inspection chamber or manhole as will enable a person readily to take samples, at any time, of what is passing into the sewer from the trade premises;

(g) the provision, testing and maintenance of such meters as may be required to measure the volume and rate of discharge of any trade effluent being discharged from the trade premises into the sewer;

(h) the provision, testing and maintenance of apparatus for determining the nature and composition of any trade effluent being discharged from the premises into the sewer;

(i) the keeping of records of the volume, rate of discharge, nature and composition of any trade effluent being discharged and, in particular, the keeping of records of readings of meters and other recording apparatus provided in compliance with any other condition attached to the consent; and

(j) the making of returns and giving of other information to the sewerage undertaker concerning the volume, rate of discharge, nature and composition of any trade effluent discharged from the trade premises into the sewer.

(3) A case falls within this subsection where the sewerage undertaker is satisfied that the constituent in question, either alone or in combination with any matter with which it is likely to come into contact while passing through any sewers-

(a) would injure or obstruct those sewers, or make the treatment or disposal of the sewage from those sewers specially difficult or expensive; or

(b) in the case of trade effluent which is to be or is discharged—

(i) into a sewer having an outfall in any harbour or tidal water; or

(ii) into a sewer which connects directly or indirectly with a sewer or sewage disposal works having such an outfall,

would cause or tend to cause injury or obstruction to the navigation on, or the use of, the harbour or tidal water.

(4) In the exercise of the power conferred by virtue of subsection (2)(e) above, regard shall be had—

(a) to the nature and composition and to the volume and rate of discharge of the trade effluent discharged;

(b) to any additional expense incurred or likely to be incurred by a sewerage undertaker in connection with the reception or disposal of the trade effluent; and

(c) to any revenue likely to be derived by the undertaker from the trade effluent.

(5) If, in the case of any trade premises, a condition imposed under this section is contravened, the occupier of the premises shall be guilty of an offence and liable—

(a) on summary conviction, to a fine not exceeding the statutory maximum; and

(b) on conviction on indictment, to a fine.

(6) In this section "harbour" and "tidal water" have the same meanings as in the [Merchant Shipping Act 1995].

(7) This section has effect subject to the provisions of sections 133 and 135(3) below.

122.— Appeals to [the Authority] with respect to decisions on applications etc.

(1) Any person aggrieved by—

(a) the refusal of a sewerage undertaker to give a consent for which application has been duly made to the undertaker under section 119 above;

(b) the failure of a sewerage undertaker to give such a consent within the period of two months beginning with the day after service of the notice containing the application; or

(c) any condition attached by a sewerage undertaker to such a consent,

may appeal to [the Authority].

(2) On an appeal under this section in respect of a refusal or failure to give a consent, [the Authority] may give the necessary consent, either unconditionally or subject to such conditions as [it] thinks fit to impose for determining any of the matters as respects which the undertaker has power to impose conditions under section 121 above.

(3) On an appeal under this section in respect of a condition attached to a consent, [the Authority] may take into review all the conditions attached to the consent, whether appealed against or not, and may—

(a) substitute for them any other set of conditions, whether more or less favourable to the appellant; or

(b) annul any of the conditions.

(4) [The Authority] may, under subsection (3) above, include provision as to the charges to be made in pursuance of any condition attached to a consent for any period before the determination of the appeal.

(5) On any appeal under this section, [the Authority] may give a direction that the trade effluent in question shall not be discharged until a specified date.

(6) Any consent given or conditions imposed by [the Authority] under this section in respect of discharges of trade effluent shall have effect for the purposes of this Chapter as if given or imposed by the sewerage undertaker in question.

(7) The powers of [the Authority] under this section shall be subject to the provisions of sections 123, 128, 133, 135 and 137 below.

141.— Interpretation of Chapter III.

(1) In this Chapter, except in so far as the context otherwise requires—

...

“trade effluent”—

(a) means any liquid, either with or without particles of matter in suspension in the liquid, which is wholly or partly produced in the course of any trade or industry carried on at trade premises; and

(b) in relation to any trade premises, means any such liquid which is so produced in the course of any trade or industry carried on at those premises, but does not include domestic sewage;

“trade premises” means, subject to subsection (2) below, any premises used or intended to be used for carrying on any trade or industry.

(2) For the purposes of this Chapter any land or premises used or intended for use (in whole or in part and whether or not for profit)—

(a) for agricultural or horticultural purposes or for the purposes of fish farming; or

(b) for scientific research or experiment,

shall be deemed to be premises used for carrying on a trade or industry; and the references to a trade or industry in the definition of "trade effluent" in subsection (1) above shall include references to agriculture, horticulture, fish farming and scientific research or experiment.

(3) Every application or consent made or given under this Chapter shall be made or given in writing.

...

158.— Powers to lay pipes in streets.

(1) Subject to the following provisions of this section, to section 162(9) below and to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

(a) to lay a relevant pipe in, under or over any street and to keep that pipe there;

(b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in, under or over any street; and

(c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above, including for those purposes the following kinds of works, that is to say—

(i) breaking up or opening a street;

(ii) tunnelling or boring under a street;

(iii) breaking up or opening a sewer, drain or tunnel;

(iv) moving or removing earth and other materials.

(2) Without prejudice to the generality of subsection (1)(c) above, every water undertaker shall have power to erect and keep in any street notices indicating the position of such underground accessories for its relevant pipes as may be used for controlling the flow of water in those pipes.

(3) The power conferred by subsection (2) above shall include power to attach any such notice as is mentioned in that subsection to any building, fence or other structure which is comprised in premises abutting on the street in question.

(4) A stopcock fitted to any service pipe in a street shall be situated as near as reasonably practicable to the boundary of the street; and a water undertaker shall consult with the highway authority concerned before determining in accordance with this subsection where to fit a stopcock in a highway.

(5) Where a water undertaker exercises its powers under this section for the purpose of carrying out works of maintenance, repair or renewal in relation to a service pipe belonging to a person other than the undertaker, the undertaker shall be entitled to recover from the occupier of the premises supplied by means of that pipe the expenses reasonably incurred by that undertaker in so exercising that power.

(6) Until the coming into force of its repeal by the New Roads and Street Works Act 1991 section 20 of the Highways Act 1980 (works in special roads) shall have effect as if the reference in that section to a power under any enactment to lay down or erect apparatus included a reference to any power to lay any relevant pipe which is conferred by this section.

(7) Subject to section 161(7) below, in this section references to a relevant pipe shall be construed—

(a) in relation to a water undertaker, as references to a water main (including a trunk main [but not including a pipe laid in pursuance of section 66B(3)(a)(ii) above which is used for the purpose of supplying water other than for domestic or food production purposes or laid in pursuance of section 66B(3)(a)(iii) above]), resource main, discharge pipe or service pipe; and

(b) in relation to a sewerage undertaker, as references to—

(i) any sewer or disposal main; [...]

(ii) in relation to the exercise of a power to lay a pipe under paragraph (a) of subsection (1) above or a power related to that power under paragraph (c) of that subsection, any lateral drain which the undertaker is to lay by virtue of section 98 or 101B above; [...]

(iii) in relation to the exercise of any other power under subsection (1) above, any lateral drain which belongs to or is vested for the time being in the undertaker [; or]

(iv) any pipe forming part of, or required in connection with, a drainage system constructed under section 114A.

(8) Subsections (9) and (11) below apply where—

(a) an appointment or variation has been made under section 7 above replacing a company as a relevant undertaker,

(b) the appointment or variation relates only to parts of the area to which the company's appointment as relevant undertaker related, and

(c) the conditions mentioned in subsection (5) of that section were required to be satisfied in relation to each of the premises in those parts served by that company.

(9) Where the company which has replaced the relevant undertaker has done so as water undertaker, in the application of this section and section 159 below in relation to that company any pipe supplying, or intended to supply, any of the premises referred to in subsection (8)(c) above with a supply of water which exceeds, or is likely to exceed, in any period of twelve months—

(a) if the area of the relevant undertaker concerned is wholly or mainly in Wales, 250 megalitres;

(b) in all other cases, [50 megalitres],

shall, for the purposes of subsection (7) above, be deemed to be a water main.

(10) Where the Secretary of State makes regulations under section 7(6) above amending section 7(5)(a) above he shall by regulations make the corresponding amendment in subsection (9) above.

(11) Where the company which has replaced the relevant undertaker has done so as sewerage undertaker, in the application of this section and section 159 below in relation to that company any pipe draining, or intended to drain, any of those premises shall, for the purposes of subsection (7) above, be deemed to be a sewer.

159.— Power to lay pipes in other land.

(1) Subject to the following provisions of this section, to section 162(9) below and to the provisions of Chapter III of this Part, every relevant undertaker shall, for the purpose of carrying out its functions, have power—

(a) to lay a relevant pipe (whether above or below the surface) in any land which is not in, under or over a street and to keep that pipe there;

(b) to inspect, maintain, adjust, repair or alter any relevant pipe which is in any such land;

(c) to carry out any works requisite for, or incidental to, the purposes of any works falling within paragraph (a) or (b) above.

(2) Nothing in subsection (1) above shall authorise a water undertaker to lay a service pipe in, on or over any land except where—

(a) there is already a service pipe where that pipe is to be laid; or

(b) the undertaker is required to lay the pipe in, on or over that land by virtue of any of subsections (3) to (5) of section 46 above.

(3) The power conferred by virtue of paragraph (b) of subsection (1) above, and the power conferred in relation to that paragraph by virtue of paragraph (c) of that subsection shall be exercisable in relation to a service pipe irrespective of the person to whom the pipe belongs; but expenses incurred in exercising those powers in relation to any pipe shall be recoverable from the person to whom the pipe belongs only if and to the extent that that person has agreed to pay them.

(4) The powers conferred by this section shall be exercisable only after reasonable notice of the proposed exercise of the power has been given to the owner and to the occupier of the land where the power is to be exercised.

(5) Subject to subsection (6) below, in relation to any exercise of the powers conferred by this section for the purpose of laying or altering a relevant pipe, the minimum period that is capable of constituting reasonable notice for the purposes of subsection (4) above shall be deemed—

(a) where the power is exercised for the purpose of laying a relevant pipe otherwise than in substitution for an existing pipe of the same description, to be three months; and

(b) where the power is exercised for the purpose of altering an existing pipe, to be forty-two days.

(6) Subsection (5) above shall not apply in the case of any notice given with respect to the exercise of any power in an emergency or for the purpose of—

(a) laying or altering a service pipe; or

(b) complying with a duty imposed under section 41 or 98 above.

(7) Subject to subsection (2) above, in this section "relevant pipe" has the same meaning as in section 158 above [(reading references there to subsection (1) as references to subsection (1) of this section)]

185.— Duty to move pipes etc. in certain cases.

(1) Where any relevant pipe or other apparatus is for the time being kept installed by a relevant undertaker on, under or over any land, any person with an interest in that land or in adjacent land may by notice to the undertaker require the undertaker to alter or remove that pipe or apparatus on the ground that the alteration or removal of that pipe or apparatus is necessary to enable that person to carry out a proposed improvement of the land in which he has an interest.

(2) Subject to subsections (3) and (4) below, where a notice is served on a relevant undertaker under subsection (1) above, it shall be the duty of the undertaker to comply with the requirement contained in the notice except to the extent that that requirement is unreasonable.

(3) Nothing in this section shall require a relevant undertaker to alter or remove any pipe or apparatus which is kept installed in, under or over any street.

(4) A relevant undertaker may make it a condition of complying with the duty to which it is subject by virtue of a notice served by any person under subsection (1) above that such security as the undertaker may reasonably require has been provided for the discharge of any obligation of that person under subsection (5) below.

(5) Where a relevant undertaker carries out any works under this section by virtue of a notice having been served by any person under subsection (1) above, the undertaker shall be entitled to recover any expenses reasonably incurred in carrying out those works from that person.

(6) Where any sums have been deposited with a relevant undertaker by way of security for the discharge of any obligation under subsection (5) above, the undertaker shall pay interest at such rate as may be determined either—

(a) by the undertaker with the approval of [the Authority]; or

(b) in default of a determination under paragraph (a) above, by [the Authority],

on every sum of 50p so deposited for every three months during which it remains in the hands of the undertaker.

(7) An approval or determination by [the Authority] for the purposes of subsection (6) above may be given or made in relation to a particular case or description of cases or generally and may be revoked at any time.

(8) The duty of a relevant undertaker under this section shall be enforceable under section 18 above by [the Authority].

(9) In this section—

“improvement”, in relation to any land, includes any development or change of use but does not include an improvement with respect to the supply of water, or the provision of sewerage services, to any premises; and

“relevant pipe” has the same meaning as in section 158 above.

219.— General interpretation (extract only)

(1) In this Act, except in so far as the context otherwise requires—

“accessories”, in relation to a water main, sewer or other pipe, includes any manholes, ventilating shafts, inspection chambers, settling tanks, wash-out pipes, pumps, ferrules or stopcocks for the main, sewer or other pipe, or any machinery or other apparatus which is designed or adapted for use in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it, but does not include any [electronic communications apparatus] unless it—

(a) is or is to be situated inside or in the close vicinity of the main, sewer or other pipe or inside or in the close vicinity of another accessory for it; and

(b) is intended to be used only in connection with the use or maintenance of the main, sewer or other pipe or of another accessory for it;

...

“drain” means (subject to subsection (2) below) a drain used for the drainage of one building or of any buildings or yards appurtenant to buildings within the same curtilage;

...

“sewer” includes (without prejudice to subsection (2) below) all sewers and drains (not being drains within the meaning given by this subsection) which are used for the drainage of buildings and yards appurtenant to buildings;

Schedule 12 – Compensation in respect of pipe-laying and other works powers (extract only)

Compensation in respect of street works powers

1

(1) This paragraph applies, in relation to a relevant undertaker, to the powers conferred on it in relation to streets by sections 158, 161 and 162 of this Act.

(2) It shall be the duty of every relevant undertaker—

(a) to do as little damage as possible in the exercise of the powers to which this paragraph applies; and

(b) to pay compensation for any loss caused or damage done in the exercise of those powers.

(3) Any dispute as to whether compensation should be paid under sub-paragraph (2) above, or as to the amount of any such compensation, shall be referred to the arbitration of a single arbitrator appointed by agreement between the parties to the dispute or, in default of agreement, by [the Authority].

(4) Until the coming into force of [Part III](#) of the New Roads and Street Works Act 1991, a payment of compensation under this paragraph shall be treated for the purposes of section 32 of the Public Utilities Street Works Act 1950 (provisions against duplication of compensation) as made under an enactment passed before that Act of 1950; but nothing in this sub-paragraph shall be taken to prejudice the power of the Secretary of State under that Act of 1991 to make an order bringing Part III of that Act into force on different days for different purposes (including the purposes of this paragraph).

Compensation in respect of pipe-laying works in private land

2

(1) If the value of any interest in any relevant land is depreciated by virtue of the exercise, by any relevant undertaker, of any power to carry out pipe-laying works on private land, the person entitled to that interest shall be entitled to compensation from the undertaker of an amount equal to the amount of the depreciation.

(2) Where the person entitled to an interest in any relevant land sustains loss or damage which—

(a) is attributable to the exercise by any relevant undertaker of any power to carry out pipe-laying works on private land;

(b) does not consist in depreciation of the value of that interest; and

(c) is loss or damage for which he would have been entitled to compensation by way of compensation for disturbance, if his interest in that land had been compulsorily acquired under section 155 of this Act,

he shall be entitled to compensation from the undertaker in respect of that loss or damage, in addition to compensation under sub-paragraph (1) above.

(3) Where any damage to, or injurious affection of, any land which is not relevant land is attributable to the exercise by any relevant undertaker, of any power to carry out pipe-laying works on private land, the undertaker shall pay compensation in respect of that damage or injurious affection to every person entitled to an interest in that land.

(4) The Secretary of State may by regulations make provision requiring a relevant undertaker, where it is proposing or has begun, in a prescribed case, to exercise any power to carry out pipe-laying works on private land, to make advance payments on account of compensation that will become payable in respect of the exercise of that power.

(5) In this paragraph "relevant land", in relation to any exercise of a power to carry out pipe-laying works on private land, means the land where the power is exercised or land held with that land.

(6) In this paragraph the references to a power to carry out pipe-laying works on private land are references to any of the powers conferred by virtue of sections 159, 161(2) and 163 of this Act.