

**Gatwick Airport Northern Runway Project
Thames Water Utilities Limited ("TWUL")
Representation on outstanding matters of asset protection at Deadline 9**

TWUL has been able to agree protective provisions with the Applicant with the exception of the points which are set out in the table below. A mark up of the version of the protective provisions submitted at Deadline 9 is appended to this submission, showing the amendments sought by TWUL in tracked changes. A commentary of these changes is set out below:

Protective Provision reference	TWUL's commentary
Paragraph 10(4)	<p>TWUL considers that the cap proposed by the Applicant is too low considering the scale and quantum of damage which the Proposed Development could cause to its network.</p> <p>TWUL's position is that the starting point for consideration of this issue should be that any losses it suffers would not have occurred if not for the Applicant's project and that the Applicant should, therefore, indemnify TWUL for those losses. In the event that damage is caused in excess of the cap, TWUL would be required to subsidise this itself, with these costs ultimately being borne by bill payers.</p> <p>The Gatwick NRP has potential impacts on several large diameter foul sewers running either within or in close proximity to the DCO boundary as well as Crawley Sewage Treatment Works (STW). If, as a result of the works to construct the Proposed Development, one of these assets is damaged, the cost to remediate them will be high due to their depth, size and foul water flow rate. As the Proposed Development works are extensive, there is the potential for damage to occur to long sections of these assets, which could impact TWUL's ability to discharge its licence obligations and could lead to extensive fines.</p> <p>As an example, if during construction of the Proposed Development a contractor inadvertently piled through one of these sewers and poured a very large volume of concrete into TWUL's sewer network, this could affect a large length of sewer and even travel into Crawley STW inlet works. This would mean that TWUL would need to replace the full sewer section and any other affected sewerage items, such as manholes, as well as the inlet works. If Crawley STW was further affected, the level of impact would be even greater and would mean parts of the STW may need replacing and could lead to the STW being out of service for a prolonged period. In addition, this could cause existing upstream connecting sewers to backup and flood, potentially causing a pollution incident, of which TWUL would face reputational damage and fines. All these items would have extensive costs running into the millions, which are likely to exceed the £15M cap that is being proposed. Furthermore, there is no allowance for future inflation in the cap, meaning it is very likely that once the Proposed Development is in the process of construction over the next 20 years the cost of any remediation work will be in exceedance of this value.</p> <p>TWUL is seeking revised drafting whereby:</p> <ul style="list-style-type: none"> • The indemnity rises in line with inflation • It applies to each discrete event that impacts TWUL's network • The cap is increased to £20M <p>TWUL is continuing to discuss the position with the Applicant with the aim of reaching an agreed position.</p>
Paragraph 10(5) and (6)	<p>TWUL requires a bond to be in place prior to any works being undertaken on or in relation to its network. This is a standard TWUL requirement outside of the DCO regime where works of diversion or removal are being</p>

	<p>undertaken with the only exception being where works are being carried out by a government body.</p> <p>The provision of a bond or security is a common requirement of many statutory undertakers (and TWUL notes that similar provisions have been agreed with National Highways in respect of the Proposed Development) and so TWUL does not consider this request to be unreasonable.</p> <p>In the event that the Applicant fails to fully complete any necessary works or to recompensate TWUL for carrying them out on the Applicant's behalf, TWUL requires the bond so as to be able to step in and carry out these works itself / reimburse its costs of doing so.</p>
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TWUL would also take the opportunity to restate the request made in response to WE.2.3 ExQ2 for the following sub-paragraphs to be added to Schedule 2, Requirement 10 for the reasons set out in that response:

(7) The authorised development is not to discharge additional foul water flows to Thames Water Utilities Limited's public sewer network until written details of the foul water discharge from the authorised development (including expected flow rates; any required hydraulic modelling results and a development phasing plan) have been submitted to and approved in writing by Thames Water Utilities Limited.

(8) Pursuant to sub-paragraph (7), no additional discharge of foul water flows is to take place other than in accordance with the approved development phasing plan unless otherwise agreed in writing with Thames Water Utilities Limited.

PART 1

FOR THE PROTECTION OF THAMES WATER UTILITIES LIMITED

For the protection of Thames Water Utilities Limited (hereinafter referred to as “TWUL”) (Company Registration No. 02366661) whose registered office address is at Clearwater Court, Vastern Road, Reading, Berkshire, RG1 8DB the following provisions have effect, unless otherwise agreed in writing between the undertaker and TWUL.

1. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable TWUL to fulfil its statutory functions in a manner no less efficient and effective than previously;

“apparatus” means —

- (a) any sewer, drain or disposal works vested in TWUL under the Water Industry Act 1991⁽¹⁾; and
- (b) any sewer, drain or disposal works which are the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal of works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at a future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps, inspection chambers or other accessories (as defined in section 219(1) of that Act) forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“the bond” means a bank bond to cover the undertaker’s liability to TWUL for 100% of the cost of any works of removal or diversion of TWUL’s apparatus to be carried out in accordance with paragraph 6 or of any works for the protection of retained apparatus to be carried out under paragraph 8;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

On street apparatus

2. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and TWUL are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets and public rights of way

3.—(1) Where any street is stopped up under article 13 (stopping up of streets) or any public right of way is stopped up under article 15 (public rights of way – creation, diversion and stopping up), TWUL has the same powers and rights in respect of any apparatus in the land in which the street or public right of way subsists as it enjoyed immediately before the stopping up and the undertaker must grant to TWUL legal easements reasonably satisfactory to TWUL in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of TWUL to require the removal of that apparatus under paragraph 6 or the power of the undertaker to carry out works under paragraph 8.

⁽¹⁾ 1991 c. 56.

(2) Regardless of the temporary alteration, diversion or restriction of any street under the powers conferred by article 14 (temporary closure of streets), TWUL is at liberty at all times to take all necessary access across any such stopped up 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 stopping up or diversion was in that street.

Protective works to buildings

4. The undertaker, in the case of the powers conferred by article 23 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land or interests

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not:

- (a) acquire any apparatus of TWUL otherwise than by agreement;
- (b) appropriate, acquire, extinguish, interfere with or override any interest in land, easement or other interest or right of TWUL so as to prevent access to the Crawley Sewage Treatment Works otherwise than by agreement; or
- (c) appropriate, acquire, extinguish, interfere with or override any interest in land, easement, other interest or right of TWUL that would:
 - (i) prevent access to any TWUL apparatus (that is not to be removed pursuant to paragraph 6); or
 - (ii) impair TWUL's ability to carry out its statutory function in connection with any of that apparatus,

without having first provided such alternative means of access to that apparatus or alternative rights in connection with that apparatus as will enable TWUL to maintain or use the apparatus or carry out its statutory functions in connection with the apparatus no less effectively than was possible before the undertaker's exercise of powers.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that TWUL's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of TWUL to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of TWUL in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to TWUL 56 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed for approval by TWUL in accordance with sub-paragraph (4) and in that case (or if in consequence of the exercise of any of the powers conferred by this Order TWUL reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to TWUL the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed TWUL must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the

requirement for TWUL to use its compulsory purchase powers to this end unless it elects (in its absolute discretion) to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between TWUL and the undertaker or in default of agreement settled by arbitration in accordance with article 54 (arbitration).

(5) TWUL must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 54 (arbitration), and after the grant to TWUL of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), and subject to sub-paragraph (7), if the undertaker gives notice in writing to TWUL that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, and TWUL gives its consent in writing (which shall not be unreasonably withheld or delayed and shall be subject to the provisions of sub-paragraph (7)), that work, instead of being executed by TWUL, may be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of TWUL.

(7) If by the end of the period of 56 days from the submission of the details relating to required removal works under sub-paragraphs (2) and (4) or the carrying out of works pursuant to sub-paragraph (6) TWUL has not intimated their disapproval of those details and the grounds of such disapproval, the undertaker may give TWUL written notice requiring TWUL to intimate approval or disapproval within a further period of 28 days beginning with the date upon which TWUL receives written notice from the undertaker and if by the expiry of the further 28 days TWUL has not intimated approval or disapproval, TWUL shall be deemed to have approved the details as submitted provided that such notification has been made in accordance with paragraph 19.

(8) Any deemed approval under sub-paragraph (7) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of TWUL or its contractors.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to TWUL facilities and rights for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and TWUL or in default of agreement settled by arbitration in accordance with article 54 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the arbitrator will—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or on the land for which the alternative apparatus is to be substituted; and
- (c) give effect to the statutory obligations of TWUL and the undertaker.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to TWUL than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to TWUL as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

8.—(1) Not less than 56 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are within 5 metres of the outside face of any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to TWUL a plan of the works to be executed.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until TWUL has given written approval of the plan so submitted and such approval may be given subject to reasonable requirements for the purposes mentioned in sub-paragraph (3).

(3) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements or modifications as may be made in accordance with sub-paragraph (4) by TWUL for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and TWUL is entitled to watch and inspect the execution of those works.

(4) Any requirements made by TWUL as a condition of the approval under sub-paragraph (2) must be notified to the undertaker within a period of 35 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(5) If by the end of the period of 35 days from the submission of the details relating to required works under sub-paragraph (1) TWUL has not intimated their disapproval of those details and the grounds of such disapproval, the undertaker may give TWUL written notice requiring TWUL to intimate approval or disapproval within a further period of 21 days beginning with the date upon which TWUL receives written notice from the undertaker and if by the expiry of the further 21 days TWUL has not intimated approval or disapproval, TWUL shall be deemed to have approved the details as submitted provided that such notification has been made in accordance with paragraph 19.

(6) If TWUL in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works (unless otherwise agreed with TWUL), a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency works but in that case must:

- (a) give TWUL notice in accordance with paragraph 19 as soon as is reasonably practicable;
- (b) provide TWUL with a plan of those works as soon as reasonably practicable subsequently;
- (c) carry out the works in accordance with industry best practice and guidelines on safe working near utilities;
- (d) comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances; and
- (e) keep the impact of those emergency works on TWUL's apparatus to a minimum.

(9) In this Part of this Schedule "emergency works" means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent which are likely to cause danger to persons or serious damage to property. Where works comprise items some of which fall within this definition, the expression "emergency works" shall be taken to include such of the items as do not fall within that definition as cannot reasonably be severed from those that do

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to TWUL all expenses reasonably incurred and any compensation properly paid by TWUL in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus

which may be required in consequence of the execution of any such works as are referred to in paragraphs 6(2) or 8(2) or 8(3).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 54 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to TWUL by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the works referred to in paragraph 8(2), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or there is any interruption in the service provided by such apparatus or alternative apparatus, the undertaker must—

- (a) bear and pay the cost reasonably and properly incurred by TWUL in making good such damage or restoring the service; and
- (b) indemnify TWUL against all reasonable claims, penalties, demands, proceedings, costs, damages and expenses which are made or taken against or recovered from, or reasonably and properly incurred by, TWUL, by reason or in direct consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by TWUL on behalf of the undertaker or in accordance with a plan approved by TWUL or in accordance with any requirement of TWUL or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless TWUL fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of TWUL, its officers, servants, contractors or agents.

(4) TWUL must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) The undertaker must not commence any works of removal or diversion of TWUL's apparatus carried out in accordance with paragraph 6 or any works under paragraph 8 unless and until TWUL is satisfied that the undertaker has first provided the bond and TWUL has confirmed the same to the undertaker in writing.

(6) The undertaker must maintain such bond for the construction period of such works from the proposed date of commencement of construction of those works.

(7) The total amount payable by the undertaker pursuant to paragraphs 10 and 11 of this Part of this Schedule shall not exceed £20 million per event (and such cap will rise in line with the Consumer Prices Index rate of inflation).

Cooperation

11. Where in consequence of the proposed construction of any of the authorised development, the undertaker or TWUL requires the removal of apparatus under paragraph 6(2) or TWUL makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of TWUL's undertaking and TWUL must use its best endeavours to co-operate with the undertaker for that purpose.

12. Where, under this Part of this Schedule, TWUL is required to give its consent, approval or agreement in respect of any matter, that consent, approval or agreement must not be unreasonably withheld or delayed.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and TWUL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

14. At all times the undertaker shall procure that its employees, contractors and subcontractors take all reasonable and proper precautions in exercise of powers conferred by this Order to ensure that as little damage, obstruction or interference is caused to TWUL's undertaking as is reasonably practicable save that this obligation shall not prevent the construction or operation of the authorised development.

Use of statutory powers

15. In the event that TWUL carries out any works involving apparatus under its own statutory powers at the express written request of the undertaker then this Part of this Schedule shall apply to such works and TWUL covenants to observe and comply with this Part of this Schedule irrespective of whether it is carrying out the works under its own statutory powers or in reliance on the powers conferred by the Order.

Ground works and surveys

16. The undertaker must provide written notice to TWUL as soon as reasonably practicable in the event they determine to alter the ground level more than 300mm within 5 metres laterally of the outside face of any apparatus. Subsequently TWUL will determine if works under paragraphs 6(2) or 8(2) are necessary.

17. The undertaker must provide written notice to TWUL as soon as reasonably practicable if they intend to survey using ground intrusive methods within 5 metres laterally of the outside face of any apparatus. Subsequently TWUL will determine if works under paragraphs 6(2) or 8(2) are necessary.

Notices and applications

18. Notwithstanding any other provision of this Order, any:

- (a) written notice to TWUL provided for in this Order; or

(b) application for the approval of TWUL made pursuant to article 22(3) (discharge of water), must be made by email to [REDACTED] or such other contact details as may be provided by TWUL to the undertaker from time to time. In the case of emergencies, notice must also be given via the Thames Water website or such other contact details as may be provided by TWUL to the undertaker from time to time.

PART 1

FOR THE PROTECTION OF THAMES WATER UTILITIES LIMITED

For the protection of Thames Water Utilities Limited (hereinafter referred to as “TWUL”) (Company Registration No. 02366661) whose registered office address is at Clearwater Court, Vastern Road, Reading, Berkshire, RG1 8DB the following provisions have effect, unless otherwise agreed in writing between the undertaker and TWUL.

1. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable TWUL to fulfil its statutory functions in a manner no less efficient and effective than previously;

“apparatus” means —

- (a) any sewer, drain or disposal works vested in TWUL under the Water Industry Act 1991⁽¹⁾; and
- (b) any sewer, drain or disposal works which are the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal of works) of that Act or an agreement to adopt made under section 104 (agreements to adopt sewer, drain or sewage disposal works, at a future date) of that Act,

and includes a sludge main, disposal main (within the meaning of section 219 (general interpretation) of that Act) or sewer outfall and any manholes, ventilating shafts, pumps, inspection chambers or other accessories (as defined in section 219(1) of that Act) forming part of any such sewer, drain or works, and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“the bond” means a bank bond to cover the undertaker’s liability to TWUL for 100% of the cost of any works of removal or diversion of TWUL’s apparatus to be carried out in accordance with paragraph 6 or of any works for the protection of retained apparatus to be carried out under paragraph 8;

“functions” includes powers and duties;

“in”, in a context referring to apparatus or alternative apparatus in land, includes a reference to apparatus or alternative apparatus under, over or upon land; and

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

On street apparatus

2. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and TWUL are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

Apparatus in stopped up streets and public rights of way

3.—(1) Where any street is stopped up under article 13 (stopping up of streets) or any public right of way is stopped up under article 15 (public rights of way – creation, diversion and stopping up), TWUL has the same powers and rights in respect of any apparatus in the land in which the street or public right of way subsists as it enjoyed immediately before the stopping up and the undertaker must grant to TWUL legal easements reasonably satisfactory to TWUL in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of TWUL to require the removal of that apparatus under paragraph 6 or the power of the undertaker to carry out works under paragraph 8.

⁽¹⁾ 1991 c. 56.

(2) Regardless of the temporary alteration, diversion or restriction of any street under the powers conferred by article 14 (temporary closure of streets), TWUL is at liberty at all times to take all necessary access across any such stopped up 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 stopping up or diversion was in that street.

Protective works to buildings

4. The undertaker, in the case of the powers conferred by article 23 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land or interests

5. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not:

- (a) acquire any apparatus of TWUL otherwise than by agreement;
- (b) appropriate, acquire, extinguish, interfere with or override any interest in land, easement or other interest or right of TWUL so as to prevent access to the Crawley Sewage Treatment Works otherwise than by agreement; or
- (c) appropriate, acquire, extinguish, interfere with or override any interest in land, easement, other interest or right of TWUL that would:
 - (i) prevent access to any TWUL apparatus (that is not to be removed pursuant to paragraph 6); or
 - (ii) impair TWUL's ability to carry out its statutory function in connection with any of that apparatus,

without having first provided such alternative means of access to that apparatus or alternative rights in connection with that apparatus as will enable TWUL to maintain or use the apparatus or carry out its statutory functions in connection with the apparatus no less effectively than was possible before the undertaker's exercise of powers.

Removal of apparatus

6.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed or requires that TWUL's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of TWUL to maintain that apparatus in that land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of TWUL in accordance with sub-paragraphs (2) to (6).

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to TWUL 56 days' written notice of that requirement, together with a plan of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed for approval by TWUL in accordance with sub-paragraph (4) and in that case (or if in consequence of the exercise of any of the powers conferred by this Order TWUL reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to TWUL the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of that apparatus.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker is unable to afford such facilities and rights as are mentioned in sub-paragraph (2) in the land in which the alternative apparatus or part of such apparatus is to be constructed TWUL must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the

requirement for TWUL to use its compulsory purchase powers to this end unless it elects (in its absolute discretion) to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between TWUL and the undertaker or in default of agreement settled by arbitration in accordance with article 54 (arbitration).

(5) TWUL must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 54 (arbitration), and after the grant to TWUL of any such facilities and rights as are referred to in sub-paragraphs (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(6) Regardless of anything in sub-paragraph (5), and subject to sub-paragraph (7), if the undertaker gives notice in writing to TWUL that the undertaker desires itself to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, and TWUL gives its consent in writing (which shall not be unreasonably withheld or delayed and shall be subject to the provisions of sub-paragraph (7)), that work, instead of being executed by TWUL, may be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of TWUL.

(7) If by the end of the period of 56 days from the submission of the details relating to required removal works under sub-paragraphs (2) and (4) or the carrying out of works pursuant to sub-paragraph (6) TWUL has not intimated their disapproval of those details and the grounds of such disapproval, the undertaker may give TWUL written notice requiring TWUL to intimate approval or disapproval within a further period of 28 days beginning with the date upon which TWUL receives written notice from the undertaker and if by the expiry of the further 28 days TWUL has not intimated approval or disapproval, TWUL shall be deemed to have approved the details as submitted provided that such notification has been made in accordance with paragraph 19.

(8) Any deemed approval under sub-paragraph (7) does not extend to the actual undertaking of the removal works, which remains the sole responsibility of TWUL or its contractors.

Facilities and rights for alternative apparatus

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to TWUL facilities and rights for the construction and maintenance of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between the undertaker and TWUL or in default of agreement settled by arbitration in accordance with article 54 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in the land of the undertaker, the arbitrator will—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the proposed works of the undertaker; and
- (b) so far as it may be reasonable and practicable to do so in the circumstances of the particular case, give effect to the terms and conditions, if any, applicable to the apparatus constructed in or on the land for which the alternative apparatus is to be substituted; and
- (c) give effect to the statutory obligations of TWUL and the undertaker.

(3) If the facilities and rights to be afforded by the undertaker in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are in the opinion of the arbitrator less favourable on the whole to TWUL than the facilities and rights enjoyed by it in respect of the apparatus to be removed and the terms and conditions to which those facilities and rights are subject, the arbitrator must make such provision for the payment of compensation by the undertaker to TWUL as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

8.—(1) Not less than 56 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are within 5 metres of the outside face of any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to TWUL a plan of the works to be executed.

(2) The undertaker must not commence any works to which sub-paragraph (1) applies until TWUL has given written approval of the plan so submitted and such approval may be given subject to reasonable requirements for the purposes mentioned in sub-paragraph (3).

(3) Those works must be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements or modifications as may be made in accordance with sub-paragraph (4) by TWUL for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and TWUL is entitled to watch and inspect the execution of those works.

(4) Any requirements made by TWUL as a condition of the approval under sub-paragraph (2) must be notified to the undertaker within a period of 35 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(5) If by the end of the period of 35 days from the submission of the details relating to required works under sub-paragraph (1) TWUL has not intimated their disapproval of those details and the grounds of such disapproval, the undertaker may give TWUL written notice requiring TWUL to intimate approval or disapproval within a further period of 21 days beginning with the date upon which TWUL receives written notice from the undertaker and if by the expiry of the further 21 days TWUL has not intimated approval or disapproval, TWUL shall be deemed to have approved the details as submitted provided that such notification has been made in accordance with paragraph 19.

(6) If TWUL in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraphs 1 to 3 and 6 to 8 apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(7) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of any works (unless otherwise agreed with TWUL), a new plan instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(8) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency works but in that case must:

- (a) give TWUL notice in accordance with paragraph 19 as soon as is reasonably practicable;
- (b) provide TWUL with a plan of those works as soon as reasonably practicable subsequently;
- (c) carry out the works in accordance with industry best practice and guidelines on safe working near utilities;
- (d) comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances; and
- (e) keep the impact of those emergency works on TWUL's apparatus to a minimum.

(9) In this Part of this Schedule “emergency works” means works whose execution at the time when they are executed is required in order to put an end to, or to prevent the occurrence of, circumstances then existing or imminent which are likely to cause danger to persons or serious damage to property. Where works comprise items some of which fall within this definition, the expression “emergency works” shall be taken to include such of the items as do not fall within that definition as cannot reasonably be severed from those that do

Expenses and costs

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to TWUL all expenses reasonably incurred and any compensation properly paid by TWUL in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus

which may be required in consequence of the execution of any such works as are referred to in paragraphs 6(2) or 8(2) or 8(3).

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule that value being calculated after removal.

(3) If in accordance with the provisions of this Part of this Schedule—

- (a) apparatus of better type, of greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or
- (b) apparatus (whether existing apparatus or apparatus substituted for existing apparatus) is placed at a depth greater than the depth at which the existing apparatus was situated,

and the placing of apparatus of that type or capacity or of those dimensions or the placing of apparatus at that depth, as the case may be, is not agreed by the undertaker or, in default of agreement, is not determined by arbitration in accordance with article 54 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the apparatus placed had been of the existing type, capacity or dimensions, or at the existing depth, as the case may be, the amount which apart from this sub-paragraph would be payable to TWUL by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

- (a) an extension of apparatus to a length greater than the length of existing apparatus is not to be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
- (b) where the provision of a joint in a pipe is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to be treated as if it also had been agreed or had been so determined.

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

10.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction, maintenance or failure of any of the works referred to in paragraph 8(2), any damage is caused to any apparatus or alternative apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or there is any interruption in the service provided by such apparatus or alternative apparatus, the undertaker must—

- (a) bear and pay the cost reasonably and properly incurred by TWUL in making good such damage or restoring the service; and
- (b) indemnify TWUL against all reasonable claims, penalties, demands, proceedings, costs, damages and expenses which are made or taken against or recovered from, or reasonably and properly incurred by, TWUL, by reason or in direct consequence of any such damage or interruption.

(2) The fact that any act or thing may have been done by TWUL on behalf of the undertaker or in accordance with a plan approved by TWUL or in accordance with any requirement of TWUL or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless TWUL fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of TWUL, its officers, servants, contractors or agents.

(4) TWUL must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of the undertaker who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) The undertaker must not commence any works of removal or diversion of TWUL's apparatus carried out in accordance with paragraph 6 or any works under paragraph 8 unless and until TWUL is satisfied that the undertaker has first provided the bond and TWUL has confirmed the same to the undertaker in writing.

(6) The undertaker must maintain such bond for the construction period of such works from the proposed date of commencement of construction of those works.

(7) The total amount payable by the undertaker pursuant to paragraphs 10 and 11 of this Part of this Schedule shall not exceed £20 million per event (and such cap will rise in line with the Consumer Prices Index rate of inflation).

Cooperation

11. Where in consequence of the proposed construction of any of the authorised development, the undertaker or TWUL requires the removal of apparatus under paragraph 6(2) or TWUL makes requirements for the protection or alteration of apparatus under paragraph 8, the undertaker must use best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of TWUL's undertaking and TWUL must use its best endeavours to co-operate with the undertaker for that purpose.

12. Where, under this Part of this Schedule, TWUL is required to give its consent, approval or agreement in respect of any matter, that consent, approval or agreement must not be unreasonably withheld or delayed.

13. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker and TWUL in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

14. At all times the undertaker shall procure that its employees, contractors and subcontractors take all reasonable and proper precautions in exercise of powers conferred by this Order to ensure that as little damage, obstruction or interference is caused to TWUL's undertaking as is reasonably practicable save that this obligation shall not prevent the construction or operation of the authorised development.

Use of statutory powers

15. In the event that TWUL carries out any works involving apparatus under its own statutory powers at the express written request of the undertaker then this Part of this Schedule shall apply to such works and TWUL covenants to observe and comply with this Part of this Schedule irrespective of whether it is carrying out the works under its own statutory powers or in reliance on the powers conferred by the Order.

Ground works and surveys

16. The undertaker must provide written notice to TWUL as soon as reasonably practicable in the event they determine to alter the ground level more than 300mm within 5 metres laterally of the outside face of any apparatus. Subsequently TWUL will determine if works under paragraphs 6(2) or 8(2) are necessary.

17. The undertaker must provide written notice to TWUL as soon as reasonably practicable if they intend to survey using ground intrusive methods within 5 metres laterally of the outside face of any apparatus. Subsequently TWUL will determine if works under paragraphs 6(2) or 8(2) are necessary.

Notices and applications

18. Notwithstanding any other provision of this Order, any:

- (a) written notice to TWUL provided for in this Order; or

(b) application for the approval of TWUL made pursuant to article 22(3) (discharge of water), must be made by email to [REDACTED] or such other contact details as may be provided by TWUL to the undertaker from time to time. In the case of emergencies, notice must also be given via the Thames Water website or such other contact details as may be provided by TWUL to the undertaker from time to time.