

The Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013

Application of the Water Industry Act 1991 to the [Thames Tideway Tunnel] Project Notice 2013

The [Thames Tideway Tunnel] Project was specified by the [Secretary of State] on [date] under regulation [4(1)] of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013(a) [and [company name] has been designated by the [Secretary of State] under regulation [8(1)] of those Regulations].

The Secretary of State makes this Notice in exercise of the powers conferred by regulation [8(4)] of those Regulations in relation to the [Thames Tideway Tunnel Project].

The Secretary of State has consulted as required by regulation [8] of those Regulations.

Citation, commencement, application and interpretation

1.—(1) This Notice—

- (a) may be cited as the Application of the Water Industry Act 1991 to the [Thames Tideway Tunnel] Project Notice 2013;
- (b) comes into force on [] 2013; and
- (c) applies in relation to the TTT project.

(2) In this Notice—

“the Act” means the Water Industry Act 1991(b), and references to enactments without further provision are references to enactments in the Act;

“the IP” means [[company name and number] designated] [the company designated in relation to the TTT project] by the [Secretary of State] under regulation [8(1)] of the Regulations;

“the Regulations” means the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013; and

“the TTT project” means the [Thames Tideway Tunnel] Project specified by the [Secretary of State] under regulation [4(1)] of the Regulations.

Application of the Act

2.—(1) Subject to the provisions of the Regulations and the modifications set out below, the following provisions of the Act apply for the purposes of the regulation of TTT project.

General duties with respect to the water industry

3.—(1) Paragraph [(2)] has effect for imposing duties on the Secretary of State and on the Authority as to when and how they should exercise and perform their powers and duties under or by virtue of the Regulations.

(2) Section 2 (general duties with respect to the water industry) applies as if, in subsection 2A (primary duties)—

(a) S.I. 2013/[]
(b) 1991 c. 56.

- (a) at the end of paragraph (c), “and” were repealed; and
- (b) at the end of paragraph (d), there were inserted—
 - “; and
 - (e) to secure that the IP is able (in particular, by securing reasonable returns on its capital) to finance the proper carrying out of those functions.”.

Special administration

- 4.—(1) Section 23 (meaning and effect of special administration order) applies as if—
- (a) in subsection (1) (meaning of special administration order), after “qualifying licensed water supplier”, there were inserted “or the IP”;
 - (b) after subsection (2A) (purposes of a special administration order for qualifying licensed water suppliers), there were inserted—
 - “[(2AA)] The purposes of a special administration order made in relation to the IP shall be—
 - (a) the transfer to another company or companies, as a going concern, of so much of the company’s undertaking as it is necessary to transfer in order to ensure that the statutory functions imposed on it in consequence of the project licence may be properly carried out; and
 - (b) the carrying out of those functions pending the making of the transfer.”;
 - (c) in subsection (2B)(a) (rescue of the company as a going concern), in paragraph (b) each time it appears, for “or (2A)(a)”, there were substituted “, (2A)(a) or [(2AA)](a)”;
 - (d) in subsection (2C) (application of subsections (2)(b) and (2A)(b) where company is being rescued as a going concern), for “and (2A)(b)”, there were substituted “, (2A)(b) and [(2AA)](b)”;
 - (e) subsections (2E) to (2G) (powers to make regulations) were repealed;
 - (f) in subsection (2H) (hive-down), for “or (2A)” there were substituted “, (2A) or [(2AA)]”;
 - (g) subsections (3A), (3B) and (3D) (powers to make regulations) were repealed;
 - (h) in subsection (3C), after “subsection (3A)”, there were inserted “including those regulations as applied by paragraph [4(6)] of the Application of the Water Industry Act 1991 to the [Thames Tideway Tunnel] Project Notice 2013”; and
 - (i) in subsection (4) (application of Schedule 2 to the Act)—
 - (i) at the end of paragraph (a), “or” were repealed; and
 - (ii) after paragraph (a), there were inserted—
 - “(aa) a company carries on the activities authorised by the project licence formerly carried on by the IP; or”.
- (2) Schedule 2 (transitional provision on termination of appointments) applies as if—
- (a) in the title, after “appointments”, there were inserted “and licences granted under Chapter 1A of Part 2”; and
 - (b) in paragraph 1 (cases where Schedule applies)—
 - (i) in sub-paragraph (3A)—
 - (aa) in paragraph (a), after “qualifying licensed water supplier”, there were inserted “or the IP”; and
 - (bb) in paragraph (b), after “section 23(6)(b) of this Act”, there were inserted “or authorised by the project licence, respectively,”; and

(a) [Note: This draft Notice assumes that the amendments made in the Flood and Water Management Act 2010 to the special administration regime are commenced before this Notice is made, including the repeal of Schedule 3 to the Act.]

- (ii) in sub-paragraph (4), at the end of the definition of “other relevant companies”, there were inserted “, or, in the case of a special administration order made in relation to the IP, Thames Water”;
 - (c) in paragraph 2 (making and modification of transfer schemes)—
 - (i) in sub-paragraph (7A)—
 - (aa) in paragraph (aa)(ii), after “section 23(2A)” there were inserted “or section [23(2AA)]”(a); and
 - (bb) in paragraph (b), after “licensed water supplier”, there were inserted “or the IP”; and
 - (ii) for sub-paragraph (8) (offence), there were substituted—

“(8) The duties of companies under sub-paragraph (7) above are enforceable under section 18 above by the Secretary of State or the Authority.”;
 - (d) in paragraph 3 (transfers by scheme), sub-paragraph (2)(b) has effect as if the words “(but may not impose new liabilities on any other appointee)” were repealed;
 - (e) paragraph 4A (exclusion of transfer of licence) were repealed; and
 - (f) paragraph 7 (power to make an Order for further transitional provision and local statutory provisions) were repealed.
- (3) Section 24 (special administration orders made on special petitions) applies as if—
- (a) in subsection (1) (applications for special administration orders made in relation to relevant undertakers), after “this Part”, there were inserted “or the IP”;
 - (b) in subsection (2) (grounds for making applications for special administration orders)—
 - (i) in paragraph (bb) (qualifying licensed water supplier causing contravention of a principal duty of a water undertaker)—
 - (aa) in the chapeau, after “qualifying licensed water supplier”, there were inserted “or the IP”; and
 - (bb) in sub-paragraph (i), for “water undertaker”, there were substituted “relevant undertaker”; and
 - (ii) in paragraph (d) (petition by the Secretary of State following company inspector’s report), after “qualifying licensed water supplier”, there were inserted “or the IP”; and
 - (c) in subsection (7) (meaning of “principal duty”), in paragraph (b), after “qualifying licensed water supplier”, there were inserted “or the IP”.
- (4) Section 25 (power to make special administration order on winding up-petition) applies as if, after “qualifying licensed water supplier”, each time it appears, there were inserted “or the IP”.
- (5) Section 26 (restrictions on voluntary winding up and insolvency proceedings) applies as if, after “qualifying licensed water supplier” there were inserted “or the IP”.
- (6) For the purposes of this Notice—
- (a) the Water Industry (Special Administration) Regulations [2012](b), and
 - (b) the Water Industry (Special Administration) Rules [2012](c),
- apply as if references to a qualifying licensed water supplier included a reference to the IP.

General functions of sewerage undertakers

- 5.—**(1) Section 94 (general duty to provide a sewerage system) applies as if—

(a) [Note: Schedule 2 to the Act is to be amended by the Water Industry Act 1991 (Amendment) Order [2012] to be made under paragraph 5(2) of Schedule 5 to the Flood and Water Management Act 2010.]

(b) S.I. []/[].

(c) S.I. []/[].

- (a) in subsection (1), after “sewerage undertaker” there were inserted “except Thames Water”;
- (b) after subsection (1) there were inserted—
 - “(1A) Subject to subsection [(1B)], it shall be the duty of Thames Water—
 - (a) to provide, improve and extend such a system of 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 Thames Water, 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.
 - (1B) For the purposes of subsection (1A), “sewers” means public sewers and the sewer which is owned by the IP.”; and
- (c) in subsections (2) and (3), each time it appears, for “subsection (1)” there were inserted “subsections (1) or (1A)”.

(2) Paragraph [(1)] does not affect the continued application of Regulation 4 of the Urban Waste Water Treatment (England and Wales) Regulations 1994^(a) (duty of sewerage undertakers to provide and maintain collecting systems and treatment plants) to Thames Water.

Provision consequential on the prohibition on Thames Water undertaking the TTT project

6. Sections 102 (adoption of sewers and disposal works) and 112 (requirement that proposed drain or sewer be constructed so as to form part of the general system) do not apply to the sewer owned by the IP.

Charges

- 7.—(1) Section 142 (powers of undertakers to charge) applies as if—
- (a) in the title, after “undertakers”, there were inserted “and the IP”;
 - (b) after subsection (1) (powers of undertakers to fix and demand charges), there were inserted—
 - “(1A) Subject to the following provisions of this Chapter, the powers of the IP shall include the power—
 - (a) to fix charges in respect of the carrying out of any of the statutory functions imposed on it in consequence of the project licence where those functions are necessary to enable Thames Water to fulfil its duties under section 94 above as applied by the Application of the Water Industry Act 1991 to the [Thames Tideway Tunnel Project] Notice 2013; and
 - (b) to demand and recover charges fixed under this section from any persons to whom—
 - (i) the IP provides services in respect of those functions; or
 - (ii) Thames Water provides services by virtue of its appointment as a sewerage undertaker.”;
 - (c) in subsection (2) (means by which charges may be fixed), in the chapeau, for “subsection (1)” there were substituted “subsections (1) or [(1A)]”;
 - (d) in subsection (2A) (disapplication of the power to fix charges by agreement in certain circumstances), in paragraph (b), after “sewerage services” there were inserted “or fixed and demanded under subsection [(1A)]”;

(a) S.I. 1994/2841, amended by S.I. 2003/1788.

- (e) in subsection (4) (matters etc. by reference to which charges may be fixed)—
 - (i) after “a relevant undertaker”, there were inserted “or the IP”; and
 - (ii) after “the undertaker”, there were inserted “or the IP respectively”; and
- (f) in subsection (6) (power of a relevant undertaker to fix charges otherwise than by virtue of Chapter 1 of Part 5 of the Act), after “a relevant undertaker”, there were inserted “or the IP”.

(2) Section 143 (charges schemes) applies as if—

- (a) after subsection (1) (power of a relevant undertaker to make a charges scheme), there were inserted—

“(1A) The IP may make a scheme (“a charges scheme”) which has effect in relation to a specified period of twelve months and does any of the following—

 - (a) fixes charges to be paid in respect of the carrying out of any of the statutory functions imposed on it in consequence of the project licence; and
 - (b) makes provision with respect to the times and methods of payment of the charges fixed by the scheme.”;
- (b) in subsection (5) (power of a relevant undertaker to enter into agreements for payment of charges) after “a relevant undertaker”, there were inserted “or the IP”; and
- (c) in subsection (9) (limit on the power of the Authority as to the exercise of its power to approve charges schemes), after “relevant undertakers”, there were inserted “or the IP”.

(3) Section 144 (liability of occupiers etc for charges) applies as if—

- (a) in subsection (1) (liability of occupiers), in the chapeau, after “the undertaker”, there were inserted “or the IP”;
- (b) in subsection (2) (liability of former occupiers where charges fixed by reference to volume), after “a relevant undertaker”, there were inserted “or to pay charges fixed by the IP”;
- (c) in subsection (3) (circumstances in which former occupiers may be made liable for charges) after “any relevant undertaker”, there were inserted “or the IP”;
- (d) in subsection (4) (meaning of “the first relevant day”), after “a relevant undertaker”, there were inserted “or the IP”; and
- (e) after subsection (4), there were inserted—

“(4A) In the case of charges fixed by the IP, in subsections (3)(a) and (4)(a) and (c) “the undertaker” means “the water undertaker appointed for that area”.”

(4) Section 144A (right of consumers to elect for charging by reference to volume) applies as if—

- (a) in subsection (9) (duty of sewerage undertaker to fix charges by reference to volume)—
 - (i) after “a sewerage undertaker”, there were inserted “and the IP”; and
 - (ii) after “the sewerage undertaker”, there were inserted “or the statutory functions imposed on the IP in consequence of the project licence”; and
- (b) in subsection (10) (duty of sewerage undertaker to fix charges without reference to volume)—
 - (i) after “a sewerage undertaker”, there were inserted “and the IP”; and
 - (ii) for “services provided by it”, there were substituted “fixed by it”.

IP’s works powers

8.—(1) Section 158 (powers to lay pipes in streets) applies as if—

- (a) in subsection (1) (power to lay pipes etc), after “functions”, there were inserted “and the IP shall, for the purpose of carrying out of any of the statutory functions imposed on it in consequence of the project licence,”; and

(b) in subsection (7) (meaning of “relevant pipe”), in paragraph (b), after “a sewerage undertaker”, there were inserted “or the IP”.

(2) Section 159 (power to lay pipes in other land) applies as if, in subsection (1), after “functions”, there were inserted “and the IP shall, for the purpose of carrying out of any of the statutory functions imposed on it in consequence of the project licence,”.

(3) Section 161 (power to deal with foul water and pollution) applies as if—

(a) in subsection (1) (powers in relation to streets), after “functions”, there were inserted “and the IP shall, for the purpose of carrying out of any of the statutory functions imposed on it in consequence of the project licence,”; and

(b) in subsection (2) (powers in relation to other land), after “functions”, there were inserted “and the IP shall, for the purpose of carrying out of any of the statutory functions imposed on it in consequence of the project licence,”.

Supplemental provisions with respect to the IP’s works powers

9.—(1) Section 179 (vesting of works in relevant undertakers) applies as if—

(a) in the title, after “undertaker”, there were inserted “and the IP”; and

(b) after subsection (1), there were inserted—

“(1ZA) Every sewer or disposal main which has been laid, in exercise of any power conferred by this Part or otherwise, by the IP, shall vest in the IP.”

(2) Section 180 and Schedule 12 (compensation for damage caused by works etc) apply as if—

(a) references to an undertaker, relevant undertaker and sewerage undertaker were references to the IP; and

(b) in Schedule 12—

(i) paragraph 2(4) (powers to make regulations) were repealed; and

(ii) paragraph 4(5) (no compensation payable where sewer etc declared vested in a sewerage undertaker) were repealed.

(3) Section 181 (complaints with respect to the exercise of works powers on private land) applies as if references to a relevant undertaker were references to the IP.

(4) Section 182 (code of practice with respect to work on private land) applies as if—

(a) in subsection (1) (duty to submit a code for approval)—

(i) in the chapeau, after “relevant undertaker”, there were inserted “and the IP”; and

(ii) in paragraph (a), after “appointment”, there were inserted “or the project licence”;

(b) subsections (2) and (4) (power to make an order) were repealed;

(c) in subsection (3) (effect of a code), the words “as a relevant undertaker” were repealed; and

(d) in subsection (5) (enforcement), after “relevant undertaker”, there were inserted “and the IP”.

(5) Section 183 and Schedule 13 (protection for particular undertakings) apply as if—

(a) references to a relevant undertaker and sewerage undertaker were references to the IP; and

(b) for paragraph 3(5) of Schedule 13 (offence for contravention of sub-paragraph (1)), there were substituted—

“(5) The requirements of sub-paragraph (1) above apply as if they were a duty imposed on the IP and shall be enforceable under section 18 above by the Authority.”.

(6) Section 186 (protective provisions in respect of flood defence works and watercourses etc) applies as if references to a relevant undertaker and sewerage undertaker were references to the IP.

(7) Section 187 (work in tidal lands etc) applies as if references to a relevant undertaker were references to the IP.

- (8) Section 188 and Schedule 14 (mineral rights) apply as if—
- (a) references to a relevant undertaker were references to the IP;
 - (b) references to the functions of a relevant undertaker were references to the statutory functions imposed on the IP in consequence of the project licence; and
 - (c) paragraph 5 of Schedule 14 (powers of entry) were repealed.
- (9) Section 189 (power to sell minerals deriving from sewerage works) applies as if references to a sewerage undertaker were references to the IP.
- (10) Section 190 (saving for planning controls) applies without modification.
- (11) Section 192 (interpretation of Part 6) applies as if—
- (a) subsections (1) (meaning of water discharge pipe), (3), (3A) and (3B) (provisions for works outside a relevant undertaker’s appointment area) were repealed; and
 - (b) in subsection (4) (certain obligations to maintain etc a pipe) after “the relevant undertaker” and “the undertaker”, each time they appear, there were inserted “or the IP”.

Information and miscellaneous supplemental provisions

- 10.**—(1) Section 199 (sewer maps) applies as if—
- (a) after subsection (1) (duty to keep records), there were inserted—
 - “(1A) Subject to subsection (6) below, it shall be the duty of the IP to keep records of the location and relevant particulars of the sewer owned by it.”;
 - (b) in subsection (3) (maintenance of separate records for each local authority area)—
 - (i) after “a sewerage undertaker”, there were inserted “and the IP”;
 - (ii) after “that undertaker”, there were inserted “or the IP”; and
 - (iii) after “the undertaker”, there were inserted “or the IP”;
 - (c) in subsection (4) (availability of records)—
 - (i) after “every sewerage undertaker”, there were inserted “and the IP”; and
 - (ii) after “the undertaker”, there were inserted “or the IP respectively”;
 - (d) in subsection (5) (information to be available as a map), after “a sewerage undertaker”, there were inserted “or the IP”; and
 - (e) in subsection (9) (enforcement), after “a sewerage undertaker”, there were inserted “or the IP”.
- (2) Section 200 (provision of sewer maps to local authorities) applies as if—
- (a) in subsection (1) (duty to provide local authorities with records), after “every sewerage undertaker”, there were inserted “and the IP”;
 - (b) in subsections (2) (local authority to make records available) and (4) (enforcement), after “a sewerage undertaker” each time they appear, there were inserted “or the IP”.
- (3) Section 205 (exchange of metering information between service providers) applies as if, after paragraph (a), there were inserted—
- “(aa) the IP; and”.
- (4) Section 212 (judicial disqualification) applies as if—
- (a) after “a relevant undertaker”, there were inserted “or the IP”; and
 - (b) at the end, there were inserted “or to the IP in respect of any matter that is not the subject-matter of the proceedings”.

General interpretation.

- 11.** Section 219(1) (general interpretation) applies as if—

(a) “the relevant sewerage provisions” included the carrying out of any of the statutory functions imposed on the IP in consequence of the project licence; and

(b) in their appropriate places, new definitions were inserted as follows—

““the IP” has the meaning given in paragraph [1(2)] of the Application of the Water Industry Act 1991 to the [Thames Tideway Tunnel] Project Notice 2013;

“the TTT project” means the [Thames Tideway Tunnel] Project specified by the [Secretary of State] under regulation [4(1)] of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013;

“the project licence” must be construed in accordance Chapter 1A of Part 2 above as applied by Schedule [2] to the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013; and

“Thames Water” means Thames Water Utilities Limited;”.

[Name]

[Title]

[Date] for and on behalf of the Secretary of State for Environment, Food and Rural Affairs

EXPLANATORY NOTE

(This note is not part of the Notice)

This Notice applies provisions of the Water Industry Act 1991 (“the Act”) for the purposes of the regulation of the [Thames Tideway Tunnel] Project (“the TTT project”) which has been specified by the Secretary of State under regulation [4(1)] of the Water Industry (Specified Infrastructure Projects) (English Undertakers) Regulations 2013 (“the Regulations”). The Act has been amended by (amongst other enactments) the Water Act 2003 and the Flood and Water Management Act 2010.

This Notice applies to the company designated by the [Secretary of State] under regulation [8(1)] of the Regulations as the infrastructure provider in relation to the TTT project (“the IP”), Thames Water Utilities Limited (“Thames Water”) as the incumbent sewerage undertaker, the Secretary of State, the Water Services Regulation Authority (“Ofwat”), [local authorities] [and the sewerage customers of Thames Water].

The Notice should be read in conjunction with the provisions of the Regulations.

Paragraph [3] applies the duty in section 2 of the Act on the Secretary of State and Ofwat to ensure that the IP is able to finance the proper carrying out of the statutory functions imposed on it in consequence of its licence.

Paragraph [4] applies the special administration regime in the Act to the IP.

Paragraph [5] modifies the general duty in section 94 of the Act (general duty to provide a sewerage system) as it applies to Thames Water. It permits Thames Water to fulfil that duty using the sewer owned by the IP as well as public sewers vested in Thames Water.

Paragraph [6] disapplies two provisions in the Act which ordinarily permit an incumbent sewerage undertaker to declare that sewers in its area are vested in it and to set standards for sewers which are to form part of the sewerage undertaker’s system. This is inappropriate in the case of the TTT project because the sewer will be constructed and owned by the IP in accordance with the project documentation.

Paragraph [7] gives the IP powers to charge the sewerage retail customers of Thames Water for the statutory functions that it is carrying out in order to ensure that Thames Water can continue to fulfil its duty under section 94 of the Act. It may do so in accordance with agreements with customers or a charges scheme which must be approved by Ofwat under sub-paragraph (2). In general, under sub-paragraphs (3) and (4), it is occupiers of premises which receive sewerage services from Thames Water which are liable to pay the charges of the IP.

Paragraph [8] gives the IP certain works powers to lay sewers in streets and private land.

Paragraph [9] makes supplementary provision in relation to the IP’s works powers. Sub-paragraph (1) states that the sewer constructed by the IP will vest in the IP. Sub-paragraph (2) makes provision for compensation to be payable for damage caused by the exercise of the IP’s works powers. Sub-paragraph (3) makes provision for Ofwat to deal with complaints made in respect of the exercise of the IP’s works powers on private land. Subparagraph (4) requires the IP to produce a code of good practice with respect to the exercise of its powers to undertake works on private land (which must be approved by the Secretary of State). Sub-paragraph (5) makes provision for the protection of certain public enterprises and utilities in relation to the IP’s works powers. Sub-paragraph (6) makes provision for the protection of flood defence works and watercourses in relation to the IP’s works powers. Sub-paragraph (7) requires any works in tidal lands to be approved by the Secretary of State. Sub-paragraphs (8) and (9) make provision in relation to minerals and the mineral rights of third parties which may be relevant during the construction of the sewer in the TTT project. Sub-paragraph (10) makes clear that nothing in this regime affects planning law.

Paragraph [10] makes provision in relation to information and other supplemental matters. Sub-paragraph (1) requires the IP to maintain records of about its sewer and to make them available to the public free of charge. Sub-paragraph (2) requires the IP to provide copies of its records to

relevant local authorities. It also requires those local authorities to make those records available to the public free of charge. Sub-paragraph (3) requires the exchange of metering information between the IP and relevant undertakers which is necessary to give effect to the charging provisions above. Sub-paragraph (4) clarifies when a judge or magistrate is not conflicted out of hearing a case under this regime.