

SCHEDULES

SCHEDULE 10

PROTECTION OF CERTAIN PERSONS

PART 8

PROTECTION FOR SEWERAGE AND WATER UNDERTAKERS

Plan approval

95.—(1) Without prejudice to the other provisions of this Part of this Schedule, before commencing the construction or renewal of any specified work, and in the case of any specified work of a temporary nature its removal, the undertaker shall submit to the company plans as described in sub-paragraph (2) (“the plans”) and shall not commence that work until the company has signified in writing its approval of those plans.

(2) The plans to be submitted to the company shall be detailed plans, drawings, sections and specifications describing the position and manner in which, and the level at which, any specified work is proposed to be constructed and the position of all apparatus within 15 metres of that work (or 200 metres where explosives are to be used) or upon which the specified work will impose a load and shall include detailed drawings of any works for alteration or replacement or protection of such apparatus which the undertaker may propose.

(3) For the purpose of the preparation of the plans and subject to such reasonable requirements as it may specify, the company shall promptly upon the undertaker’s reasonable request permit the undertaker to have access to plans in its possession and to any of its apparatus.

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

- (a) may be given subject to reasonable conditions;
- (b) shall not be unreasonably withheld; and
- (c) shall be deemed to have been given if it is neither given nor refused within 42 days of the submission of plans for approval.

(5) Prior to their approval under sub-paragraph (1), the company may require such modifications to be made to the plans as may be reasonably necessary for the alteration or replacement of apparatus, to secure apparatus and the remainder of its undertaking as a sewerage undertaker and water undertaker against interference or risk of damage and to provide and secure reasonably proper and convenient means of access to apparatus and its sewage treatment works.

96.—(1) The specified works shall be constructed and in the case of any temporary work removed in accordance with plans approved, or deemed to be approved, or settled by arbitration, as the same may be amended from time to time by agreement between the undertaker and the company, and in the construction and removal of the specified works, the undertaker shall comply with all reasonable requirements of the company (which shall be given as soon as reasonably practicable) and shall provide new, altered or substituted apparatus or works for the protection of apparatus and the remainder of its undertaking as a sewerage undertaker and water undertaker, in such manner

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as the company may reasonably require, by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such apparatus and the remainder of its undertaking by reason of the specified works.

(2) All works under sub-paragraph (1), for the provision of new, altered or substituted apparatus or the protection of any apparatus shall, where so required by the company, be constructed by the company or under the supervision, if given, of an officer of the company duly appointed for the purpose and to the company's reasonable satisfaction, and all costs, charges and expenses reasonably incurred by the company in the construction of such works, or in the preparation or examination of plans or designs of such works, or in such supervision, shall be paid to the company by the undertaker.

(3) Where works are constructed under sub-paragraph (1) by the company, they shall be constructed with all reasonable despatch and also to the reasonable satisfaction of the undertaker.

(4) When works for the provision of any such new, altered or substituted apparatus, or any such protective work forming part of any such new, altered or substituted apparatus or any existing apparatus, have been completed under this Part of this Schedule to the reasonable satisfaction of the company, they shall be vested in the company forthwith but shall be maintainable by the undertaker until a period of 12 months has elapsed and the company or an engineer appointed by the company acting reasonably has issued a certificate of final inspection of the new, altered or substituted apparatus.

97.—(1) Subject to the following provisions of this Part of this Schedule, the undertaker shall be liable to make good, or, if the company so decides, to repay to the company any reasonable expense reasonably incurred by the company in making good, all injury or damage to any apparatus (except in so far as such apparatus is intended for alteration or removal for the purposes of the specified work) caused by or resulting from the construction of any specified work or any investigation undertaken in relation to any specified works and the provision of any new, altered or substituted apparatus or any protective work under this Part of this Schedule and shall pay to the company any reasonable additional expense to which it may be put in the maintenance, management or renewal or any new, altered or substituted apparatus which may be necessary in consequence of the construction of any specified work save to the extent that sub-paragraph (6) applies provided that the undertaker may at its request pay a capitalised sum to the company in settlement of any such claim by the company representing the reasonable additional expense to which the company reasonably expects to be put.

(2) The company shall, in respect of the capitalised sums referred to in sub-paragraph (1) provide such details of the formula by which those sums should be calculated as the undertaker may reasonably require.

(3) The undertaker shall indemnify the company against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the company which the company may incur or have to pay or which it may sustain in consequence of the construction of a specified work or of the failure or want of repair of a specified work or any subsidence caused by any specified work or in consequence of any act or omission of the undertaker, their contractors, agents, workmen or servants, whilst engaged upon the specified work and any new, altered or substituted apparatus or any protective work.

(4) The company shall give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise thereof shall be made without the agreement in writing of the undertaker which, if it withholds any such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(5) Nothing in sub-paragraph (1) or (3) shall impose any liability on the undertaker in respect of any damage to the extent that it is attributable to the act, neglect or default of the company, its officers, servants, or, if not the undertaker, its contractors or agents.

(6) If pursuant to the provisions of this Part of this Schedule—

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- (a) alternative apparatus of better type, or greater capacity or of greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions, except where this has been solely due to using the nearest currently available type, or
- (b) apparatus (whether existing apparatus or alternative 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 to be necessary having regard, among other things, to the nature of the authorised works, then, if it involves cost in the construction of works under paragraph 92 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 the company by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(7) For the purposes of sub-paragraph (6), an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus except in a case where the apparatus as so extended serves a purpose (either additional to or instead of that served by the existing apparatus) which was not served by the existing apparatus.

(8) An amount which apart from this sub-paragraph would be payable to the company in respect of works by virtue of this paragraph shall, 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 the company any financial benefit by deferment of the time for renewal of the apparatus or of the system of which it forms part in the ordinary course, be reduced by the amount which represents that benefit.

(9) In any case where work is carried out by the undertaker pursuant to paragraph 92 and, if such work had been carried out by the company, the repayment made to the company under this paragraph would fall to be reduced pursuant to sub-paragraphs (4) to (6), the company shall pay to the undertaker such sum as represents the amount of that reduction.

98.—(1) An officer of the company duly appointed for the purpose may, at any reasonable time and, if required by the undertaker, under their supervision and control, enter upon and inspect any specified work or any other works constructed under this Part of this Schedule but may not give instructions to any person engaged in or about the specified works except the undertaker or such person as it may from time to time nominate.

(2) The approval by the company of any plans, drawings, sections or specifications or the supervision by it of any work under this Part of this Schedule shall not (if it was done without negligence on the part of the company, its officers, servants, or, if not the undertaker, its contractors or agents) exonerate the undertaker from any liability or affect any claim for damages by the undertaker.

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