

## SCHEDULE 9

### Protective provisions

## PART 2

### For the protection of Dŵr Cymru Cyfyngedig (DC)

**11.** For the protection of DC referred to in this Part 2 of Schedule 9, the following provisions, unless otherwise agreed in writing between the undertaker and DC, have effect.

**12.** In this Part of this Schedule:

“accessories” has the same meaning as that set out in section 219 of the Water Industry Act 1991 but also includes any feature or aspect of a design that is intended to receive or facilitate the receipt of rainwater or surface water and which is part of a sustainable drainage system;

“DC apparatus” means all apparatus or accessories vested in or belonging to DC for the purpose of carrying on its statutory undertaking including reservoirs, water treatment works and waste water treatment works;

“clearance area” means the area of land:

- (a) within 3 metres either side of the centre line of any public sewer or public water main that is less than 300mm in diameter; or
- (b) within 6 metres either side of a public sewer or public water main where the public sewer or public water main is 300mm in diameter or more.

“DC” means Dŵr Cymru Cyfyngedig, a limited company registered in Wales under Company No. 2366777 and having its registered office at Dwr Cymru Welsh Water, Linea, Fortran Road, St Mellons, Cardiff, Wales, CF3 0LT or its properly authorised agents or sub-contractors;

“draft specification” means a detailed plan, cross-section and description of the works to be prepared by the undertaker (including, without limitation, a method statement and risk assessment setting out the intention in respect of the works, construction methods and programmes, position of the affected DC apparatus and intended works;

“emergency works” has the same meaning as in section 52 of the 1991 Act;

“functions” has the same meaning as in section 219 WIA 1991 and includes powers and duties;

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

“sustainable drainage system” means any structure designed to receive rainwater and other surface water where such structure includes any feature or aspect of design that is intended to receive or facilitate the receipt of rainwater except a public sewer or a natural watercourse;

“WIA 1991” means the Water Industry Act 1991 (c.56) as amended;

“works” means any works forming part of the authorised development in, on, over or under any land purchased, held, or used under this Order that are within 15 metres measured in any direction of any DC apparatus, or reasonably likely to affect any DC apparatus together with all ancillary actions relating hereto; and

for the avoidance of doubt, all other terms are as defined in Part 2 of this Schedule or article 2 of this Order.

**13.—(1)** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker is not to acquire any DC apparatus or its accessories or override or extinguish any easement or other interest of DC or acquire any land or

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other interest of DC identified in the book of reference or create any new rights over the same otherwise than by agreement with DC (not to be unreasonably withheld or delayed) in accordance with the provisions of this Schedule.

(2) Sub-paragraph (1) does not apply to the powers conferred on the undertaker by this Order to interfere temporarily with DC's rights to access DC apparatus or accessories but subject always to paragraphs 17 and 18 of this Part and to the undertaker giving DC 28 days notice of such interference.

### **Precedence of the WIA 1991**

**14.**—(1) Regardless of any provision of this Order and this Schedule the undertaker must comply fully with all provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DC apparatus and nothing in this Order releases the undertaker from the requirement to comply with the provisions of the WIA 1991 in relation to any use of, any connection with or any actions or omissions which in any way affect the DC apparatus, including without limitation:

- (a) sections 41-44 of the WIA 1991 in respect of water main requisitions;
- (b) section 45 of the WIA 1991 in respect of any connections to a water main;
- (c) sections 98-101 of the WIA 1991 in respect of sewer requisitions;
- (d) section 102 of the WIA 1991 in respect of the adoption of sewers and disposal works;
- (e) section 104 of the WIA 1991 in respect of the adoption of any sewers, drains or sewage disposal works as part of the development;
- (f) sections 106 to 109 of the WIA 1991 (inclusive) in respect of any connections to public sewers;
- (g) section 111 of the WIA 1991 in respect of the restrictions on use of public sewers;
- (h) sections 158 and 159 of the WIA 1991 in respect of statutory rights of access to DC apparatus;
- (i) section 174 of the WIA 1991 in respect of offences of interference with works etc;
- (j) section 178 of the WIA 1991 in respect of obstruction of sewerage works etc;
- (k) section 185 of the WIA 1991 in respect of the removal, diversion or alteration of DC apparatus.

(2) The arbitration provisions at article 44 of this Order must not apply where DC uses a warrant of entry in accordance with the provisions of the WIA 1991.

### **Protection of DC apparatus**

**15.**—(1) Not less than 28 days before starting the execution of any works that are within the clearance area or will, or could reasonably foreseeably affect, any DC apparatus the removal or alteration of which has not been required by the undertaker under paragraph 14(1), the undertaker must submit to DC written notice together with a draft specification. For the purposes of preparing the draft specification DC must, following a written request and subject to such reasonable conditions as may be imposed by DC (including in respect of payment of its reasonable costs in meeting the request), provide the undertaker with copies of such plans and records of its apparatus as may be held by DC.

(2) DC is to examine the draft specification submitted under sub-paragraph 15(1) and give its written consent or proposed amendments (each not to be unreasonably withheld or delayed) to the draft specification (including the proposed commencement date and anticipated completion date) within 28 days from the date of receipt (and in the event of amendments the process in this sub-paragraph 15(2) will be repeated where those amendments are not accepted by the undertaker).

For the avoidance of doubt, DC's proposed amendments may include such reasonable requirements for the alteration (including but not limited to the extension of DC apparatus) or otherwise for the protection of DC apparatus, or for securing access to it.

(3) If after the expiry of 28 days DC has not communicated approval or disapproval under sub-paragraph 15(2), the undertaker may write to DC at [DeveloperServicesassetenquiries@dwrcymru.com](mailto:DeveloperServicesassetenquiries@dwrcymru.com) or such other address as DC may appoint instead for that purpose and notify the undertaker in writing clearly stating that no response has been received from DC under sub-paragraph 15(2) and that a response must be provided to the undertaker within 14 days from the date of receipt of the correspondence sent under this sub-paragraph 15(3) and if no response is received within 14 days from the date of receipt DC is deemed to have approved the plans as supplied under sub-paragraph 15(2).

(4) Once approved under sub-paragraph 15(2) or 15(3), the draft specification is to become the specification and the works are to be executed only in accordance with the specification and such reasonable requirements as may be made in accordance with sub-paragraph 15(2) and DC is entitled to watch and inspect the execution of those works.

(5) Nothing in this paragraph 15 precludes the undertaker from submitting at any time or from time to time, but in no case less than 28 days before commencing the execution of any works, a draft specification instead of the draft specification previously submitted, and having done so the provisions of this paragraph 15 apply to and in respect of the new draft specification.

(6) The undertaker is not required to comply with sub-paragraph 15(1) in a case of emergency provided it has complied with paragraph 18 below save that the undertaker is to comply with sub-paragraphs 15(1) and (4) above in so far as is reasonably practicable in the circumstances.

(7) DC may opt to carry out any temporary and/or protective works specified under sub-paragraph 15(2) to DC apparatus, and if DC opts to do so it will:

- (a) agree the scope and timings of the works with the undertaker (and the undertaker must not unreasonably withhold or delay its agreement to the same);
- (b) provide an invoice together with supporting evidence of the estimated costs of the works on the basis of which it is to agree with undertaker the reasonable costs of the works to be met by the undertaker;
- (c) following agreement and payment of the costs, DC will as soon as reasonably practicable carry out and complete the works; and
- (d) notify the undertaker immediately in writing upon completion of the temporary and/or protective works.

(8) Where DC apparatus will be affected by the works the undertaker must determine the exact location of DC apparatus prior to any works being carried out by the undertaker.

(9) The undertaker must give DC at least 7 days' advance written notice of making any trial holes within 15 metres measured in any direction of any DC apparatus which must include details of the timings and location of the trial holes and allow a representative of DC to attend and observe these works.

(10) Any affected DC apparatus which is no longer required by DC but is not removed shall be transferred to the undertaker by way of a deed of transfer from DC at the undertaker's expense and on such terms as DC reasonably requires.

### **Suspension of works**

**16.—**(1) DC is entitled to instruct the undertaker to suspend the relevant works if in DC's reasonable and proper opinion the actions of the undertaker, or those of its contractor(s) or subcontractor(s) in carrying out the works, have caused damage to any DC apparatus. In the event of such instruction being given by DC—

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- (a) the undertaker must procure that it and its contractor(s) and subcontractor(s) shall forthwith suspend or cease the works having due regard to health and safety factors and shall discuss and agree with DC the remedial actions required prior to resuming the works;
  - (b) the undertaker and DC must act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the works;
  - (c) DC must submit to the undertaker within 5 days following the suspension, a written notice specifying the reasons for suspending the works;
  - (d) in the event that DC fails to supply the written notice within 5 days of suspension DC's instruction to suspend the works will be void and the undertaker will be entitled to recommence the works; and
  - (e) DC must commence, carry out and complete any remedial works pursuant to sub-paragraph 16(1), as soon as reasonably practicable and DC must give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker is entitled to resume the works.
- (2) DCC is entitled to reclaim all reasonable costs of all remedial works undertaken in accordance with this paragraph 16.

### **Co-Operation**

17.—(1) In the event that either the undertaker or DC (for the purpose of this paragraph 16 “the party” or together “the parties”) wishes to take any action which would impact on the ability of the undertaker to carry out the authorised development or DC to carry out its statutory functions, the parties must use reasonable endeavours to cooperate with one another in order to align work streams so to minimise or avoid disruption to the other party's works. In respect of the references to ‘work’ and ‘works’ in this sub-paragraph 17(1), to the extent that this refers to ‘work’ or ‘works’ to be undertaken by DC, the definition of works in paragraph 12 of this Part does not apply.

(2) Subject to paragraph 18, differences or disputes arising between the undertaker and DC under this Schedule will, unless otherwise agreed in writing between the undertaker and DC, be determined by arbitration in accordance with article 44 (arbitration) of the Order.

(3) For the avoidance of doubt whenever DC's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by DC is required, it must not be unreasonably withheld or delayed.

### **Emergency Works**

18.—(1) The undertaker is permitted to carry out emergency works provided that it first notifies DC of the proposed emergency works. For the avoidance of doubt, in the event that DC suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the indemnity in paragraph 19 will apply.

(2) DC must at all times be permitted to carry out any emergency works in relation to its DC apparatus within the Order limits in accordance with Part II Schedule 6 WIA 1991.

(3) Emergency works required in order for DC to fulfil its statutory functions under sub-paragraph 18(2) takes precedence over works to be carried out by the undertaker and, in such circumstances, the undertaker must reschedule its works accordingly.

(4) In respect of the references to ‘work’ and ‘works’ in this paragraph 18, to the extent that this is ‘work’ or ‘works’ to be undertaken by DC, the definition of works in paragraph 12 of this Part does not apply.

### **Damage to DC apparatus**

**19.**—(1) If, for any reason or in consequence of the construction of any of the works, any damage is caused to any DC apparatus (other than DC apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of the works), or there is any interruption in any service provided, or in the supply of any goods, by DC, the undertaker must—

- (a) bear and pay on demand accompanied by an invoice or claim by DC the cost reasonably and properly incurred and documented by DC in making good any damage or restoring the supply; and
- (b) make reasonable compensation to DC for any other expenses, loss, damages, penalty or costs incurred by DC, by reason or in consequence of any the damage or interruption.

(2) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect of—

- (a) any damage or interruption to the extent that it is attributable to the act, neglect or default of DC, its officers, employees, contractors or agents; and / or
- (b) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working or business interruption) arising from any such damage or interruption, which is not reasonably foreseeable.

(3) DC must give the undertaker reasonable notice of any such claim or demand and no settlement, admission of liability or compromise or demand is to be made without the consent of the undertaker.

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

(5) DC must use its reasonable endeavours to mitigate in whole or in part and to minimise any claims, costs, expenses, losses, damages, demands, and penalties to which the indemnity under this paragraph 19 applies. If requested to do so by the undertaker, DC must provide an explanation of how the claim has been minimised. The undertaker will only be liable under this paragraph 19 for claims reasonably incurred by DC.