

SCHEDULE 8

Protective provisions

PART 4

Protection for Anglian Water Services Limited

1. The provisions of this Part have effect for the protection of Anglian Water unless otherwise agreed in writing between the undertaker and Anglian Water.

2. In this Part—

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

“Anglian Water” means Anglian Water Services Limited (company number 02366656);

“apparatus” means—

- (a) any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991; and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 of that Act,

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

“emergency” means the immediate threat of death or injury to persons, of damage to property or of damage to the environment and the risk that drinking water supply or quality will fall below the Drinking Water Inspectorate standards;

“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 on land;

“plan” includes section, drawing, specification and method statement.

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

4.—(1) The undertaker must not—

- (a) interfere with, build over or near to, any apparatus within the Order land;
- (b) execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus; or
- (c) where the apparatus is laid in a trench, execute any filling around the apparatus within the standard protection strips, which are the strips of land falling the following distances to either side of the medial line of any apparatus—
 - (i) 2.25 metres, where the diameter of the pipe is less than 150 millimetres;
 - (ii) 3 metres, where the diameter of the pipe is 150 millimetres or more but less than 450 millimetres;
 - (iii) 4.5 metres, where the diameter of the pipe is 450 or more but less than 750 millimetres; and

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(iv) 6 metres, where the diameter of the pipe is 750 millimetres or more, unless otherwise agreed in writing by Anglian Water, following a request from the undertaker (including a description and plan of the works), such agreement not to be unreasonably withheld or delayed; and this provision must be brought to the attention of any agent or contractor responsible for carrying out any works on behalf of the undertaker.

(2) The works may be executed only in accordance with the plan and description submitted under sub-paragraph (1) and such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and an officer of Anglian Water is entitled to watch and inspect the execution of the works at the undertaker's cost.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan and description under sub-paragraph (1) are submitted to it.

(4) Anglian Water may extend the period up to 42 days with the consent of the undertaker, such consent not to be unreasonably withheld.

(5) If by the expiry of the further 42 days Anglian Water has not intimated agreement or refusal, Anglian Water is deemed to have agreed the plans as submitted.

(6) Any refusal must be accompanied by a statement of the grounds of refusal.

(7) Nothing in this paragraph 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 new plan and description instead of the plan and description previously submitted, and once the undertaker has done so the provisions of this paragraph apply to and in respect of the new plan and description.

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

(a) give to Anglian Water notice as soon as is reasonably practicable and a plan and description of the works as soon as reasonably practicable subsequently; and

(b) comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(9) It is reasonable for Anglian Water to require that the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or the filling around the apparatus (where the apparatus is laid in a trench), be executed by Anglian Water at the expense of the undertaker.

(10) Anglian Water must execute any requirement made under sub-paragraph (9) in a timely manner.

5. Except in an emergency, the alteration, extension, removal or relocation of any apparatus must not be implemented until—

(a) any requirement for permits under the Environmental Permitting (England and Wales) Regulations 2010 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such relocation are approved, such approvals from Anglian Water not to be unreasonably withheld or delayed; and

(b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under the Water Industry Act 1991, such agreement not to be unreasonably withheld or delayed,

and the works must be executed only in accordance with the plan and description submitted and with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus or for securing access to it.

6. Where—

- (a) in exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which apparatus is placed; and
- (b) the apparatus is to be relocated, extended, removed or altered in any way,

except in an emergency, no alteration or extension may take place until Anglian Water has established to its reasonable satisfaction contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus; and Anglian Water must use reasonable endeavours to establish contingency arrangements in a timely manner.

7. Despite any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement; and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, except in an emergency, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the apparatus that is reasonably convenient for Anglian Water, such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 36 (arbitration).

8. If, in consequence of the exercise of the powers conferred by this Order, the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to the apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before the obstruction.

9. If, in consequence of the exercise of the powers conferred by this Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets must immediately be given to Anglian Water and must be afforded the same protection as other Anglian Water assets.

10.—(1) If, for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 7 and 9, any damage is caused to any apparatus (other than apparatus, the repair of which is not reasonably necessary in view of its intended removal for the purposes of the works) or property of Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

- (a) bear and pay the cost reasonably incurred and documented by Anglian Water in making good any damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty or costs incurred by Anglian Water,

by reason or in consequence of any the damage or interruption.

(2) Nothing 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 Anglian Water, its officer, servants, contractors or agents.

11. Any difference or dispute arising between the undertaker and Anglian Water under this Part must unless otherwise agreed in writing between the undertaker and Anglian Water be determined by arbitration in accordance with article 36.