

SCHEDULES

SCHEDULE 14

Article 62

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

1. The provisions of this Part of this Schedule have effect for the protection of statutory undertakers unless otherwise agreed in writing between the undertaker and the statutory undertaker in question.

2. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the statutory undertaker in question to fulfil its statutory functions in a manner not less efficient than previously;

“apparatus” means—

- (a) in the case of a statutory undertaker within paragraph (a) of the definition of that term, electric lines or electrical plant as defined in the Electricity Act 1989(1), belonging to or maintained by the statutory undertaker for the purposes of electricity supply;
- (b) in the case of a statutory undertaker within paragraph (b) of the definition of that term, any mains, pipes or other apparatus belonging to or maintained by the statutory undertaker for the purposes of gas supply;
- (c) in the case of a statutory undertaker within paragraph (c) of the definition of that term—
 - (i) mains, pipes or other water apparatus belonging to or maintained by the statutory undertaker for the purposes of water supply; and
 - (ii) mains, pipes or other water apparatus that is the subject of an agreement to adopt made under section 51A (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991(2);
- (d) in the case of a sewerage undertaker—
 - (i) any drain or works vested in the sewerage undertaker under the Water Industry Act 1991; and
 - (ii) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)(3) (adoption of sewers and disposal works) of that Act or an

(1) 1989 c. 29.

(2) 1991 c. 56. Section 51A was inserted by section 92(1) of the Water Act 2003 (c. 37) and amended by section 10(2) of the Water Act 2014 (c. 21).

(3) Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37) and paragraph 90 of Schedule 7 to the Water Act 2014 (c. 21).

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agreement to adopt made under section 104(4) (agreements to adopt sewer, drain or sewage disposal works, at 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 or other accessories forming part of any such sewer, drain or works, and in each case includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“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

“statutory undertaker” means—

- (e) any licence holder within the meaning of Part 1 (electricity supply) of the Electricity Act 1989;
- (f) a gas transporter within the meaning of Part 1 (gas supply) of the Gas Act 1986(5);
- (g) a water undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage undertaker within the meaning of Part 1 (preliminary) of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the utility undertaker of the above descriptions to whom it belongs or by whom it is maintained.

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

4.—(1) Regardless of the temporary stopping up, alteration or diversion of streets under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), a statutory undertaker is at liberty at all times to take all necessary access across any such street and to carry out 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 temporary stopping up, alteration or diversion was in that street.

(2) Where any street is stopped up under article 14 (permanent stopping up of streets and private means of access), any statutory undertaker whose apparatus is in the street has the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the statutory undertaker legal easements reasonably satisfactory to the statutory undertaker in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of the statutory undertaker to require the removal of that apparatus under paragraph 6 or to carry out works under paragraph 8.

5. Despite any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

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 over which access to any apparatus is enjoyed or requires that the statutory undertaker’s apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of a statutory undertaker to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has

(4) Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003, section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraph 91 of Schedule 7 to, the Water Act 2014.

(5) 1986 c. 44. See section 7(1); this was substituted by section 5 of the Gas Act 1995 (c. 45) and was further amended by section 76 of the Utilities Act 2000 (c. 27).

been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of the statutory undertaker in question in accordance with sub-paragraphs (2) to (9).

(2) If, for the purpose of carrying out 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 the statutory undertaker in question 28 days' written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed and in that case (or if in consequence of the exercise of any of the powers conferred by this Order a statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker 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, the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably practicable use reasonable endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(4) The obligation imposed on the statutory undertaker under sub-paragraph (3) does not extend to the exercise by the statutory undertaker of any power to acquire any land or rights in land by compulsory purchase order.

(5) 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 the statutory undertaker in question and the undertaker or in default of agreement settled by arbitration in accordance with article 67 (arbitration).

(6) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 67 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (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.

(7) Regardless of anything in sub-paragraph (6), if the undertaker gives notice in writing to the statutory undertaker in question that it desires itself to carry out any work, or part of any work, in connection with the construction or removal of apparatus in any land controlled by the undertaker, that work, instead of being carried out by the statutory undertaker, may be carried out by the undertaker, in accordance with plans and in a position agreed between the statutory undertaker and the undertaker or, in default of agreement, determined by arbitration in accordance with article 67 (arbitration), without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

(8) In carrying out any work under sub-paragraph (7) the undertaker must comply with all statutory obligations which would have been applicable had the works been carried out by the statutory undertaker.

(9) Nothing in sub-paragraph (7) authorises the undertaker to carry out the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or carry out any filling around the apparatus (where the apparatus is laid in a trench) within 600 millimetres of the apparatus.

7.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to a statutory undertaker facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker

and the statutory undertaker in question or in default of agreement settled by arbitration in accordance with article 67 (arbitration).

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

- (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 any proposed works of the undertaker or traffic on the highway; 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 any apparatus for which the alternative apparatus is to be substituted.

(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 the statutory undertaker in question 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 that statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

8.—(1) Not less than 28 days before starting the carrying out of any works authorised by this Order that will or may affect any apparatus the removal of which has not been required by the undertaker under paragraph 6(2), the undertaker must submit to the statutory undertaker in question a plan, section and description of the works to be carried out.

(2) Those works must be carried out only in accordance with the plan, section and description submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the carrying out of those works.

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

(4) If a statutory undertaker 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 (4) apply as if the removal of the apparatus had been required by the undertaker under paragraph 6(2).

(5) 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 carrying out of any works, a new plan, section and description instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory undertaker in question notice as soon as is reasonably practicable and a plan, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) Nothing in sub-paragraph (6) entitles the undertaker to carry out works to any apparatus but, upon receipt of notice from the undertaker, the statutory undertaker must proceed to carry out such works as may be required without unnecessary delay.

9.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker in question the proper and reasonable expenses incurred by that statutory undertaker in, or in connection with the inspection, removal, relaying, replacing, alteration or protection of any apparatus under any provision of this Part of this Schedule (including any costs reasonably incurred or compensation properly paid in connection with the acquisition of facilities and rights or exercise of statutory powers for such apparatus) including the cutting off of any apparatus from any other apparatus or the making safe of any redundant apparatus as a consequence of the exercise by the undertaker of any power under this Order and the surveying of any land or works, the inspection, superintendence and monitoring of works or the removal of any temporary works reasonably necessary in consequence of the exercise of the undertaker of any power under this Order.

(2) The value of any apparatus removed under this Part of this Schedule is to be deducted from any sum payable under sub-paragraph(1), that value being calculated after removal.

(3) If in accordance with 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,

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 67 (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 the statutory undertaker in question by virtue of sub-paragraph (1) is to 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 cable 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 a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, 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 statutory undertaker in question any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, 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 6(2), 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 those works) or property of a statutory undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any statutory undertaker, the undertaker must—

- (a) bear and pay the cost reasonably incurred by that statutory undertaker in making good such damage or restoring the supply; and

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(b) indemnify the statutory undertaker against all reasonable claims, penalties, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from, or reasonably and properly incurred by, the statutory undertaker, by reason or in consequence of any such damage or interruption.

(2) 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 a statutory undertaker, its officers, servants, contractors or agents.

(3) A statutory undertaker 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 which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

11. 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 that apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before the obstruction.

PART 2

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

12.—(1) For the protection of any operator, the following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the operator.

(2) In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003(6);

“electronic communications apparatus” has the same meaning as in the electronic communications code;

“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act(7);

“electronic communications code network” means—

(a) so much of an electronic communications network or infrastructure system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 (application of the electronic communications code) of the 2003 Act; and

(b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act;

“infrastructure system” has the same meaning as in the electronic communications code and references to providing an infrastructure system are to be construed in accordance with paragraph 7(2) of that code; and

“operator” means the operator of an electronic communications code network.

(6) 2003 c. 21.

(7) See section 106 and Schedule 3A. Section 106 was amended by section 4 of the Digital Economy Act 2017 (c. 30) and Schedule 3A was inserted by Schedule 1 to that Act.

13. The exercise of the powers conferred by article 37 (statutory undertakers and utilities) is subject to Part 10 (undertaker’s works affecting electronic communications apparatus) of the electronic communications code.

14.—(1) Subject to sub-paragraph (2), if as the result of the authorised development or its construction, or of any subsidence resulting from any of those works—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of those works), or other property of an operator; or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(2) 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 an operator, its officers, servants, contractors or agents.

15. The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand is to be made without the consent of the undertaker which, if it withholds such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand. Any difference arising between the undertaker and the operator under this Part of this Schedule must be referred to and settled by arbitration under article 67 (arbitration).

16. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act; or
- (b) any damage, or any interruption, caused by electro-magnetic interference arising from the construction or use of the authorised development.

PART 3

FOR THE PROTECTION OF ANGLIAN WATER

17. For the protection of Anglian Water, the provisions of this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and Anglian Water, have effect.

18. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable Anglian Water to fulfil its statutory functions in not less efficient a manner than previously;

“Anglian Water” means Anglian Water Services Limited, company number 02366656, whose registered office is at Lancaster House, Lancaster Way, Ermine Business Park, Huntingdon, Cambridgeshire PE29 6YJ;

“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;

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- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991⁽⁸⁾; and
- (c) any sewer which is so vested or is the subject of a notice of intention to adopt given under section 102(4)⁽⁹⁾ (adoption of sewers and disposal works) of the Water Industry Act 1991 or an agreement to adopt made under section 104⁽¹⁰⁾ (agreements to adopt sewer, drain or sewage disposal works, at future date) 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 (general interpretation) of that Act) and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“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 sections, drawings, specifications and method statements.

19. The undertaker must not interfere with, build over or near to any apparatus within the Order land or execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or execute any filling around the apparatus (where the apparatus is laid in a trench) within the standard protection strips which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus—

- (a) 2.25 metres where the diameter of the pipe is less than 150 millimetres;
- (b) 3 metres where the diameter of the pipe is between 150 and 450 millimetres;
- (c) 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and
- (d) 6 metres where the diameter of the pipe exceeds 750 millimetres,

unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out any work on behalf of the undertaker.

20. The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any permits required under the Environmental Permitting (England and Wales) Regulations 2016⁽¹¹⁾ or other legislation and any other associated consents are obtained by the undertaker, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location 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 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 such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water without delay for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

⁽⁸⁾ 1991 c. 56.

⁽⁹⁾ Section 102(4) was amended by section 96(1)(c) of the Water Act 2003 (c. 37) and paragraph 90 of Schedule 7 to the Water Act 2014 (c. 21).

⁽¹⁰⁾ Section 104 was amended by sections 96(4) and 101(2) of, and Part 3 of Schedule 9 to, the Water Act 2003, section 42(3) of the Flood and Water Management Act 2010 (c. 29) and section 11(1) and (2) of, and paragraph 91 of Schedule 7 to, the Water Act 2014 (c. 21).

⁽¹¹⁾ S.I. 2016/1154.

21. In the situation, where in exercise of the powers conferred by the Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension is to 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. Anglian Water must use reasonable endeavours to establish contingency arrangements in a timely manner.

22. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement with Anglian Water, 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, 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.

23. 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 such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

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

25. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 20 to 22 and 24 above 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 those 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 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 such damage or interruption.

26. Nothing in paragraph 25 above 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 officers, servants, contractors or agents.

27. Any difference or dispute arising between the undertaker and Anglian Water under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with article 67 (arbitration).

PART 4

FOR THE PROTECTION OF THE ENVIRONMENT AGENCY

28.—(1) The following provisions of this Part of this Schedule apply for the protection of the Agency unless otherwise agreed in writing between the Agency and the undertaker.

(2) In this Part of this Schedule—

“the Agency” means the Environment Agency;

“drainage work” means any main river and includes any land which provides or is expected to provide flood storage capacity for any main river, and any bank, wall or embankment or

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other structure, or any appliance, constructed or used for land drainage, flood defence or tidal monitoring but excludes any bank, wall, embankment or other structure, or any appliance, constructed or used for land drainage in respect of ordinary watercourses;

“excluded flood risk activity” means any licensable marine activity authorised by article 56 (deemed marine licence);

“the fishery” means any waters containing fish and fish in, or migrating to or from, such waters and the spawn, spawning ground, habitat or food of such fish;

“main river” means all watercourses shown as such on the statutory main river maps held by the Agency and the Department for Environment Food and Rural Affairs including any structure or appliance for controlling or regulating the flow of water in or out of the watercourse;

“ordinary watercourse” has the meaning given to it by section 72(1) (interpretation) of the Land Drainage Act 1991(12)

“plans” includes sections, drawings, specifications, calculations and method statements;

“specified work” means so much of any work or operation authorised by this Order as is in, on, under, over or within 16 metres of a drainage work or is otherwise likely to—

- (a) affect any drainage work or the volumetric rate of flow of water in or flowing to or from any drainage work;
- (b) affect the flow, purity or quality of water in any watercourse or other surface waters or ground water;
- (c) cause obstruction to the free passage of fish or damage to any fishery;
- (d) affect the conservation, distribution or use of water resources; or
- (e) affect the conservation value of the main river and habitats in its immediate vicinity;

but does not include any excluded flood risk activity; and

“Work No.6A(iii)” means Work No. 6A(iii) as is described in Schedule 1 (authorised development).

29.—(1) Before beginning to construct any specified work, the undertaker must submit to the Agency plans of the specified work and such further particulars available to it as the Agency may within 28 days of the receipt of the plans reasonably request.

(2) Any such specified work must not be constructed except in accordance with such plans as may be approved in writing by the Agency or as determined in accordance with paragraph 38.

(3) Any approval of the Agency required under this paragraph—

- (a) must not be unreasonably withheld or delayed;
- (b) in the case of a refusal, must be accompanied by a statement of grounds of refusal;
- (c) is deemed to have been refused if it is neither given nor refused within 2 months of the submission of the plans for approval or receipt of further particulars if such particulars have been requested by the Agency for approval; and
- (d) may be given subject to such reasonable requirements as the Agency may have for the protection of any drainage work or the fishery or for the protection of water resources, or for the prevention of flooding or pollution or in the discharge of its environmental duties.

(4) The Agency must use its reasonable endeavours to respond to the submission of any plans before the expiration of the period mentioned in sub-paragraph (3)(c).

(12) 1991 c. 59. Section 72(1) has been amended by paragraph 194(1) of Schedule 22 to the Environment Act 1995 (c. 25), paragraph 39 of Schedule 2 to the Flood and Water Management Act 2010 (c. 29) and S.I. 2013/755.

30. Without limiting paragraph 29, the requirements which the Agency may have under that paragraph include conditions requiring the undertaker, at its own expense, to construct such protective works, whether temporary or permanent, before or during the construction of the specified works (including the provision of flood banks, walls or embankments or other new works and the strengthening, repair or renewal of existing banks, walls or embankments) as are reasonably necessary—

- (a) to safeguard any drainage work against damage; or
- (b) to secure that its efficiency for flood defence purposes is not impaired and that the risk of flooding is not otherwise increased when compared with that reported in the environmental statement,

by reason of any specified work.

31. Subject to sub-paragraph (2), any specified work, and all protective works required by the Agency under paragraph 30, must be constructed—

- (a) without unreasonable delay in accordance with the plans approved under this Part of this Schedule; and
- (b) to the reasonable satisfaction of the Agency,

and the Agency is entitled by its officer to watch and inspect the construction of such works.

(2) The undertaker must give to the Agency not less than 14 days' notice in writing of its intention to commence construction of any specified work and notice in writing of its completion not later than 7 days after the date on which it is completed.

(3) If the Agency reasonably requires, the undertaker must construct all or part of the protective works so that they are in place prior to the construction of any specified work to which the protective works relate.

(4) If any part of the specified work or any protective work required by the Agency is constructed otherwise than in accordance with the requirements of this Part of this Schedule, the Agency may by notice in writing require the undertaker, at the undertaker's own expense, to comply with the requirements of this Part of this Schedule or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld) to remove, alter or pull down the work to the reasonable satisfaction of the Agency, and where removal is required, to restore the site of the specified work or protective work required by the Agency to its former condition to such extent and within such limits as the Agency reasonably requires.

(5) Subject to sub-paragraph (6) and paragraph 36, if within a reasonable period, being not less than 28 days from the date when a notice under sub-paragraph (4) is served upon the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may execute the works specified in the notice and any expenditure incurred by it in so doing shall be recoverable from the undertaker.

(6) In the event of any dispute as to whether sub-paragraph (4) is properly applicable to any work in respect of which a notice has been served under that sub-paragraph, or as to the reasonableness of any requirement of such a notice, the Agency must not, except in an emergency, exercise the powers conferred by sub-paragraph (5) until the dispute has been finally determined in accordance with paragraph 38.

32.—(1) Subject to sub-paragraph (5) the undertaker must from the commencement of the construction of the specified works maintain in good repair and condition and free from obstruction any drainage work which is situated within the limits of deviation and on land held by the undertaker for the purposes of or in connection with the specified works, whether or not the drainage work is constructed under the powers conferred by this Order or is already in existence.

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(2) If any such drainage work which the undertaker is liable to maintain is not maintained to the reasonable satisfaction of the Agency, the Agency may by notice in writing require the undertaker to repair and restore the drainage work, or any part of such drainage work, or (if the undertaker so elects and the Agency in writing consents, such consent not to be unreasonably withheld or delayed), to remove the specified work and restore the site to its former condition, to such extent and within such limits as the Agency reasonably requires.

(3) Subject to sub-paragraph (4) and paragraph 36, if, within a reasonable period, being not less than 28 days beginning with the date on which a notice in respect of any drainage work is served under sub-paragraph (2) on the undertaker, the undertaker has failed to begin taking steps to comply with the requirements of the notice and has not subsequently made reasonably expeditious progress towards their implementation, the Agency may do what is necessary for such compliance and any expenditure incurred by the Agency in so doing is to be recoverable from the undertaker.

(4) In the event of any dispute as to the reasonableness of any requirement of a notice served under sub-paragraph (2), the Agency must not, except in the case of an emergency, exercise the powers conferred by sub-paragraph (3) until the dispute has been finally determined in accordance with paragraph 38.

(5) This paragraph and paragraph 33 do not apply to—

- (a) drainage works which are vested in the Agency, or which the Agency or another person is liable to maintain and is not proscribed by the powers of this Order from doing so;
- (b) to any drainage works comprised in Work No. 6A(iii); or
- (c) any obstruction of a drainage work, for the purposes of a work or operation authorised by this Order and carried out in accordance with the provisions of this Part of this Schedule.

33. Subject to paragraphs 32(5) and 36, if by reason of the construction of any specified work or of the failure of any such work, the efficiency of any drainage work for flood defence purposes is impaired, or that drainage work is otherwise damaged, such impairment or damage must be made good by the undertaker to the reasonable satisfaction of the Agency and if the undertaker fails to do so, the Agency may make good the impairment or damage and recover any expenditure incurred by the Agency in so doing from the undertaker.

34. If by reason of construction of the specified work the Agency's access to flood defences or equipment maintained for flood defence purposes is materially obstructed, the undertaker must provide such alternative means of access that will allow the Agency to maintain the flood defence or use the equipment no less effectively than was possible before the obstruction within 48 hours of the undertaker becoming aware of such obstruction.

35.—(1) The undertaker must take all such measures as may be reasonably practicable to prevent any interruption of the free passage of fish in the fishery during the construction of any specified work.

(2) If by reason of—

- (a) the construction of any specified work; or
- (b) the failure of any such work,

damage to the fishery is caused, or the Agency has reason to expect that such damage may be caused, the Agency may serve notice on the undertaker requiring it to take such steps as may be reasonably practicable to make good the damage, or, as the case may be, to protect the fishery against such damage.

(3) Subject to paragraph 36, if within such time as may be reasonably practicable for that purpose after the receipt of written notice from the Agency of any damage or expected damage to the fishery, the undertaker fails to take such steps as are described in a notice served under sub-paragraph (2),

the Agency may take those steps and any expenditure incurred by the Agency in doing so is to be recoverable from the undertaker.

(4) Subject to paragraph 36, in any case where immediate action by the Agency is reasonably required in order to secure that the risk of damage to the fishery is avoided or reduced, the Agency may take such steps as are reasonable for the purpose, and may recover from the undertaker any expenditure incurred in so doing provided that notice specifying those steps is served on the undertaker as soon as reasonably practicable after the Agency has taken, or commenced to take, the steps specified in the notice.

36.—(1) The undertaker must indemnify the Agency in respect of all costs, charges and expenses which the Agency incur—

- (a) in the examination or approval of plans under this Part of this Schedule;
- (b) in the inspection of the construction of the specified works or any protective works required by the Agency under this Part of this Schedule; and
- (c) in the carrying out of any surveys or tests by the Agency which are reasonably required in connection with the construction of the specified works.

37.—(1) The undertaker is responsible for and must indemnify the Agency against all costs and losses not otherwise provided for in this Part of this Schedule which may be incurred or suffered by the Agency by reason of—

- (a) the construction, of any specified works comprised within the authorised development or the failure of any such works comprised within them; or
- (b) any act or omission of the undertaker, its employees, contractors or agents or others whilst engaged upon the construction of the authorised development or dealing with any failure of the authorised development.

(2) For the avoidance of doubt, in sub-paragraph (1)—

“costs” includes—

- (a) expenses and charges;
- (b) staff costs and overheads; and
- (c) legal costs;

“losses” includes physical damage.

(3) Subject to sub-paragraph (7), the undertaker must indemnify the Agency against all liabilities, claims and demands arising directly out of or directly in connection with the construction, maintenance or failure of the authorised development or out of the matters referred to in sub-paragraph (1)(a) and (1)(b).

(4) For the avoidance of doubt, in sub-paragraph (3)—

“claims” and “demands” include as applicable—

- (a) costs (within the meaning of sub-paragraph (2)) incurred in connection with any claim or demand; and
- (b) any interest element of sums claimed or demanded;

“liabilities” includes—

- (c) contractual liabilities;
- (d) tortious liabilities (including liabilities for nuisance);
- (e) liabilities to pay statutory compensation or for breach of statutory duty; and

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(f) liabilities to pay statutory penalties imposed on the basis of strict liability (but does not include liabilities to pay other statutory penalties).

(5) The Agency must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise must be made without the agreement of the undertaker which agreement must not be unreasonably withheld or delayed.

(6) The fact that any work or thing has been executed or done by the undertaker in accordance with a plan approved by the Agency, or to its satisfaction, or in accordance with any directions or award of an arbitrator, does not relieve the undertaker from any liability under the provisions of this Part of this Schedule.

(7) Nothing in this paragraph imposes any liability on the undertaker with respect to any claims, costs, demands, liability or losses to the extent that it is attributable to the act, neglect or default of the Agency, its officers, servants, contractors or agents.

38. Any dispute arising between the undertaker and the Agency under this Part of this Schedule is, if the parties agree, to be determined by arbitration under article 67 (arbitration), but must in the absence of agreement be determined by the Secretary of State for Environment, Food and Rural Affairs or its successor and the Secretary of State for Transport or its successor, acting jointly, on a reference to them by the undertaker or the Agency, after notice in writing by one to the other.

PART 5

FOR THE PROTECTION OF THE WAVENEY, LOWER YARE AND LOTHINGLAND INTERNAL DRAINAGE BOARD

39. The provisions of this Part of this Schedule have effect for the protection of the Board unless otherwise agreed in writing between the undertaker and the Board.

40. In this Part of this Schedule—

“the Board” means the Waveney, Lower Yare and Lothingland Internal Drainage Board and any successor body;

“the outfall pipe” means the specified work comprising an outfall pipe, headwall and associated apparatus to be constructed in and adjoining the relevant watercourse known as Waveney Common Road 1 adjacent to Queen Anne’s Road, subject to such amendments as the Board and the undertaker may agree;

“relevant asset” means any watercourse, adjoining bank, embankment or wall and any associated apparatus or structure, including sluices and water control appliances, which is for the time being belonging to or under the control of the Board;

“relevant watercourse” means a watercourse that is a relevant asset;

“specified work” means any part of the authorised development which affects a relevant asset;

“functions” includes powers and duties.

41.—(1) The undertaker must notify the Board of the intended commencement and anticipated duration of any specified work.

(2) The notification given under sub-paragraph (1) must be given 14 working days prior to commencement of the relevant specified work.

(3) The requirements of sub-paragraphs (1) and (2) have effect in addition to any other requirement of this Part of this Schedule which must be complied with by the undertaker prior to the commencement of any specified work.

42. The undertaker must permit any officer of the Board to inspect any specified work during its execution.

43. In constructing and operating the outfall pipe, the undertaker must comply with the following requirements—

- (a) prior to constructing the outfall pipe, the undertaker must obtain the approval of the Board to a maximum rate of discharge of surface water through the outfall pipe;
- (b) the undertaker must ensure that the approved maximum rate of discharge is not exceeded;
- (c) the headwall must comprise a recessed precast concrete unit of adequate dimensions;
- (d) all material excavated during the construction of the headwall must be removed from the watercourse;
- (e) the area around the headwall must be restored to its previous condition as soon as possible following construction of the headwall;
- (f) in constructing the outfall pipe the undertaker must ensure that erosion protection sufficient to prevent scouring of the bank of the watercourse is provided beneath the outfall pipe, across the bed and extending across the far bank to the same level as the outfall pipe and to at least one metre either side of it;
- (g) no part of the outfall pipe or associated erosion protection measures is to protrude beyond the existing bank profile; and
- (h) discharge through the outfall is to consist solely of surface water runoff and must not include any treated foul water.

44. If a specified work requires a relevant water course to be temporarily dammed off and over-pumped (“the temporary operations”), the undertaker must—

- (a) obtain the approval of the Board to the commencement and duration of the temporary operations;
- (b) ensure that the drainage of any other person is not materially affected by the temporary operations;
- (c) construct the dams in such a manner that they can be removed without delay in the event that water levels rise to an unacceptably high level or the over-pumping apparatus provided by the undertaker is unable to cope with the flow of water; and
- (d) remove the dams as soon as reasonably possible following completion of the relevant part of the specified works and restore the areas where the dams were positioned to their previous condition.

45. Where the undertaker culverts a relevant watercourse in carrying out a specified work, it must comply with the following requirements—

- (a) where there are existing pipes entering the length of watercourse to be culverted, these are to be suitably extended and diverted to outfall into—
 - (i) the open channel to one side or the other of the culverted length; or
 - (ii) to the nearest access chamber;
- (b) the material used in infilling must not contain any garden rubbish, brick rubble or other deleterious material and must be suitably compacted; and
- (c) the infill material must be laid to the depth required to match the existing ground levels to either side of the infilled area.

46.—(1) Where any damage is caused by the undertaker to a relevant watercourse or other relevant asset in any of the circumstances mentioned in sub-paragraph (2), the undertaker must make good such damage as soon as possible following its occurrence.

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(2) The circumstances are—

- (a) the driving or waiting of any vehicle on the banks of any relevant watercourse;
- (b) the placing, use or storage of any apparatus, structure or equipment in or on the banks of any relevant watercourse;
- (c) the dredging, raising or taking of any gravel, sand, ballast, clay or other material from the bed or bank of any relevant watercourse; and
- (d) any other activity undertaken in the construction or maintenance of any specified work.

47.—(1) The undertaker must at its expense maintain all elements of any specified work which are, following their execution, vested in the undertaker.

(2) Where any works to a relevant asset are executed by the undertaker in carrying out the specified works, the Board continues to have responsibility for maintenance of the relevant asset.

48. Any agreement or approval under this Part of this Schedule must not be unreasonably withheld or delayed and must be given in writing.

49.—(1) Save as provided by sub-paragraph (2) or other provision of this Order, nothing in this Part of this Schedule affects the rights and responsibilities of the Board under the Land Drainage Act 1991.

(2) The Board must not exercise its functions in a manner contrary to the provisions of the Order.

50. Any difference or dispute arising between the undertaker and the Board under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the Board, be determined by arbitration under article 67 (arbitration).

PART 6

FOR THE PROTECTION OF THE GREAT YARMOUTH PORT AUTHORITY

51. For the protection of the GYPA the following provisions of this Part of this Schedule, unless otherwise agreed in writing between the undertaker and the GYPA, have effect.

52. In this Part of this Schedule the following definitions apply—

“adverse effects” means any physical damage to the river caused by the specified work which affects the stability, structure and safety of the river and, without limitation on the scope of that meaning, includes—

- (a) the erosion of the bed, banks or walls of the river, or the impairment of the stability of any works or lands forming part of the river;
- (b) damage to the walls or banks of the river caused by excessive weight being placed on the river walls;
- (c) the silting of the river or the deposit of materials in the river so as to damage the river; and
- (d) the pollution of the river;

“engineer” means a professionally qualified engineer (whether an employee of the GYPA or external consultant) appointed by the GYPA for the purpose in question;

“protective work” means a work which is reasonably necessary to minimise adverse effects to the river arising from the construction of the specified work as may be required by the GYPA by notice to the undertaker served not later than 6 months before the commencement of any specified work;

“river” means the river Yare;

“specified work” means so much of the authorised development as may in any way materially affect the river or is situated upon, across, under or over or within 15 metres of the river; and

“works” means the protective works and the authorised development.

53.—(1) Subject to sub-paragraph (2), nothing in this Order authorises the undertaker to—

(a) construct or maintain any specified work or protective work which would have the effect of exceeding the load bearing capacity of any part of the existing river wall which is not replaced by the specified work or protective work; or

(b) use any part of the river wall which is not to be replaced by the works as a load bearing wall or structure for any specified work or protective work.

(2) The provisions of sub-paragraph (1) do not apply where the GYPA has accepted the findings of a risk assessment carried out by the undertaker, including supporting calculations, that demonstrates that the load bearing capacity of the relevant part of the river wall would be adequate with or without specified reinforcement.

(3) The GYPA must not unreasonably withhold its acceptance of a risk assessment under sub-paragraph (2), must give its decision within 10 working days of the undertaker submitting its risk assessment, but may give its acceptance on terms that the undertaker must carry out any specified reinforcements.

54. The undertaker must not commence the operation of any element of the specified work until the engineer has notified the undertaker that any related protective work has been completed to the engineer’s reasonable satisfaction. The engineer’s notification shall not be unreasonably withheld or delayed and in any event the engineer shall provide any comments within 1 month of the undertaker providing the plans of the protective work. If the engineer has made no comment within 3 weeks the undertaker may remind the engineer of this obligation and if the engineer makes no comments within 1 week of being reminded the engineer is to be deemed to have notified the undertaker that the protective work has been completed to the engineer’s reasonable satisfaction.

55. Any navigation simulations required to be carried out by the undertaker on the river relating to any temporary works are to be conducted with GYPA pilots or the harbour master in attendance. The undertaker will notify the GYPA of any navigation simulations in advance of it being carried out and the GYPA may send representatives.

56. The undertaker shall give the GYPA not less than 6 weeks’ notice in writing of the commencement of construction of the authorised development unless otherwise agreed.

57.—(1) The undertaker must comply with any special direction given by the harbour master under section 3(1)(b) of the Great Yarmouth Outer Harbour Act 1986(13) or section 16 of the Great Yarmouth Port Authority Act 1990(14) that is strictly necessary to ensure the safety of navigation during construction of the works.

(2) Except as is mentioned in sub-paragraph (1), neither the harbour master nor the GYPA may give any general or special direction which would prevent or materially hinder any works or activity authorised by or under any provision of this Order.

58. Any specified work must, when commenced be constructed—

(a) without unnecessary delay;

(b) in such a manner as to cause as little adverse effects as is reasonably practicable to the river;

(c) in such a manner as to cause no material adverse effects to the integrity of the walls or banks of the river; and

(13) 1986 c. xxii.

(14) 1990 c. xxvii.

- (d) in such a manner as to cause as little inconvenience as is reasonably practicable to the GYPA.

59.—(1) The undertaker must not in the course of constructing any specified work or protective work or otherwise in connection with such works do or permit anything which results in the deposit of any polluting materials on, in or over the river and must take such steps as the harbour master may reasonably require to avoid or make good any breach of its obligations under this paragraph.

(2) Subject to sub-paragraphs (3) and (4), the undertaker must not in the course of constructing any specified work or protective work or otherwise in connection with such works do or permit anything which results in the deposit of any other materials in the river and must take such steps as the harbour master may reasonably require to avoid or make good any breach of its obligations under this sub-paragraph.

(3) For the avoidance of doubt, the structures comprising the authorised development, and any specified work or protective work shall not themselves constitute a material for the purposes of sub-paragraph (2).

(4) Sub-paragraph (2) does not apply to the deposit by the undertaker of materials (other than polluting materials) in the river if such deposit has been authorised in writing by the GYPA.

60. Where reasonably required to do so by the engineer or the harbour master for the purpose of ensuring the safety of the river the undertaker must, to the reasonable satisfaction of the engineer or harbour master, fence off any specified work or protective work or take such steps as the engineer or the harbour master may reasonably require to be taken for the purpose of separating a specified work or a protective work from the river, whether on a temporary or permanent basis or both.

61.—(1) Prior to commencement of the works, a baseline hydrographic survey will be undertaken by the undertaker. This survey will form the basis for comparison with future surveys described within this paragraph. The results of the survey will be shared with the GYPA and must form the baseline of future assessments and/or surveys carried out under this paragraph.

(2) Following commencement of construction of a specified work or a protective work (whichever is commenced first) the undertaker must carry out further assessments and surveys of the area of the river under and in the vicinity of the authorised development (and other such reasonable area notified to the undertaker by the GYPA) in accordance with the following requirements—

- (a) during the period from commencement of the works in the river until the date occurring one year after substantial completion of the works surveys are to be carried out 4 times per calendar year at such times within the year as the GYPA reasonably directs;
- (b) during the period from the date occurring one year after substantial completion of the works until the date occurring three years after substantial completion of the works surveys are to be carried out 2 times per calendar year at such times within the year as the GYPA reasonably directs;
- (c) paragraph (d) is to apply if any of the surveys undertaken under paragraph (b) or other evidence provided by the GYPA to the undertaker shall have demonstrated that the works are creating an adverse effect and that adverse effect has not been mitigated to the reasonable satisfaction of the GYPA by the expiry of the period referred to in paragraph (b);
- (d) where this paragraph applies, surveys shall be carried out once per calendar year, at such time as the GYPA reasonably directs, during the period commencing with the date of expiry of the period referred to in paragraph (b) and ending on the seventh anniversary of that date or such date as the adverse effect has been demonstrated to the reasonable satisfaction of the GYPA to have been mitigated (whichever date shall first occur);
- (e) should a survey carried out during construction show any discernible change has occurred to the river bed levels, localised sediment sampling will be undertaken in the area of change

to determine the composition of the material, hydrodynamic modelling will be undertaken to assess the extent to which the new bridge construction activity may have contributed to the change and a detailed report prepared;

- (f) should a survey carried out after construction show either a sudden large change to the river bed level or, over time, that a longer-term trend of change in level pattern has occurred, localised sediment sampling will be undertaken in the affected area to determine the composition of the material, hydrodynamic modelling will be undertaken to assess the extent to which the new bridge construction activity may have contributed to the change and a detailed report prepared;
- (g) the extent of the surveys carried out under this paragraph will be 200 metres upstream and downstream of the centre line of the new bridge covering the full width of the river over this length; and
- (h) all hydrographic surveys mentioned in this paragraph will be undertaken using a suitable multibeam echo-sounder, in accordance with the International Hydrographic Organization Standards for Hydrographic Surveys 5th Edition (February 2008) to Survey Order 1a.

62.—(1) In the event that the further surveys or assessment carried out under paragraph 196(2) disclose that the works have resulted in part of the river becoming silted up or subject to scouring to the extent that there is, or is likely to be, a materially adverse impact on either the safety or efficiency of navigation of the river or the condition of the works, then the undertaker must dredge the river (or carry out such alternative remedial works as the GYPA, acting reasonably, approves) to remove the silting or make good the scouring as soon as reasonably practicable to the reasonable satisfaction of GYPA and at no expense to the GYPA.

(2) Where the undertaker is obliged to carry out dredging or remedial works under sub-paragraph (1), the GYPA may instead (at its discretion) carry out such dredging or works on the undertaker's behalf if the undertaker so requests and on condition that the undertaker will meet all reasonable expenses of the GYPA.

63.—(1) The undertaker must at all reasonable times on being given reasonable notice (except in cases of emergency) allow reasonable facilities to the engineer for access to inspect any specified work or protective work during its construction.

(2) The undertaker must supply the engineer with all such information as the engineer may reasonably require with regard to any specified work or protective work or the method of constructing but such information shall be limited to matters of reasonable concern to the GYPA observed during an inspection under sub-paragraph (1).

64. The undertaker must provide and maintain at its own expense in the vicinity of the specified work or protective work such temporary lighting from sunset to sunrise or other periods of adverse visibility and such signal lights for the control of navigation as the harbour master may reasonably require during the construction of a specified work or a protective work or the material failure of a specified work or protective work.

65.—(1) The undertaker must, upon completion of any part of a specified work, and after the purpose of any temporary works has been accomplished, remove as soon as reasonably practicable any temporary works constructed and materials for temporary works placed in, on or over the river in connection with that part of the specified work.

(2) All temporary works must be removed to the reasonable satisfaction of the engineer and in such a way as causes as little adverse effects or interference as reasonably practicable with, or delay or interruption to, the safe passage of vessels along the river.

(3) In the event of any adverse effects to the river that is caused by the undertaker's failure to remove any temporary works in accordance with sub-paragraph (1), the undertaker must as soon

as reasonably practicable make good such adverse effects and pay to the GYPA the reasonable additional costs and expenses it incurs by reason of such failure to remove temporary works.

(4) In the event of the undertaker failing to remove any temporary works in accordance with subparagraph (1) and thereafter failing to remove the temporary works within a reasonable period after receiving notice from the GYPA, the GYPA may remove those works and charge the undertaker the reasonable costs and expenses incurred as a result.

66.—(1) The undertaker must, before placing any temporary structure or apparatus over the river required in connection with the maintenance or repair or renewal of a specified work, comply with the reasonable requirements of the GYPA, such requirements to include—

- (a) the undertaker providing the GYPA with 42 days' written notice of this requirement so that the GYPA may bring these works to the attention of users of the river; and
- (b) receiving approval from the harbour master, but on terms that such approval must not be unreasonably withheld or delayed.

(2) In the case of any work carried out in an emergency the undertaker is only required to give such notice to the harbour master as may be reasonably practicable in the circumstances.

67. If at any time after the completion of a specified work, not being a work vested in the GYPA, the GYPA gives notice to the undertaker informing it that the state of maintenance of the specified work appears to be such that the specified work is causing or is likely to cause adverse effects to the river, the undertaker must, on receipt of such notice together with supporting evidence of the matters asserted by the notice to the reasonable satisfaction of the undertaker take such steps as may be reasonably necessary to put the specified work in such state of maintenance as not to cause such adverse effect and if the undertaker fails to do so, the GYPA may make and do in and upon the land of the undertaker or the GYPA all such works to put the specified work in such state of maintenance as before and the cost, expenses and losses incurred by the GYPA in so doing must be repaid to the GYPA by the undertaker.

68. Within 3 months of completion of the specified works and protective works (“the completed works”), the undertaker must provide to the GYPA drawings of the completed works as constructed, including the electrical and mechanical drawings of the opening and closing mechanisms of the new bridge. If any modifications are made to the completed works following their completion the undertaker must provide updated as built drawings of the modified works.

69. The undertaker must keep such elements of the specified works that are not subject to the statutory duty of the undertaker as highway authority to maintain the highway, including the vessel waiting facilities and navigational lighting, in good and substantial repair and condition to the reasonable satisfaction of the GYPA.

70. The undertaker must, so far as practicable, keep the new bridge in the raised position from the occurrence of a failure to raise or close until such time as the engineer has certified in writing (which shall be done as soon as reasonably practicable) that the new bridge can be operated normally and safely. The engineer must provide a copy of such certification to the undertaker as soon as reasonably practicable.

71. The undertaker must publish and maintain in a prominent position at each end of the new bridge and such other positions as reasonably necessary to attract the attention of vessel operators and users of the new bridge and the river, notices setting out the arrangements for the opening of the new bridge. Such notices and locations, in so far as they are for the purpose of notifying vessel users, are to be approved by the GYPA.

72. Before providing any illumination or illuminated traffic sign on or in connection with the specified work or in the vicinity of the river, the undertaker must consult with the GYPA and comply with the GYPA's reasonable requirements in regard to such lighting with a view to ensuring that—

- (a) appropriate navigation lighting is placed on the specified works and on any protective works; and
- (b) any illuminations will not be directed upstream or downstream into the path of oncoming vessels on the river to ensure that such illumination or illuminated signs cannot be confused with any lights or lighting used for controlling, directing or securing the safety of vessels on the river.

73. The undertaker is responsible for the development, implementation and ongoing maintenance of a motorists early warning notification system which may include deployment of variable message signing, email alerts and use of social media to convey any likely disruption to users of the new bridge and the river due to new bridge openings and to be provided at no cost to the GYPA.

74. Any reasonable and proper additional expenses not otherwise provided for in this Part of this Schedule which the GYPA may incur in maintaining the river under any powers existing at the making of this Order by reason of the existence of a specified work must, be repaid by the undertaker to the GYPA (but subject to the submission to the undertaker, to its reasonable satisfaction, of demonstrable evidence that the additional expenses are a direct result of the construction of the specified work) so as to ensure that the GYPA has been reimbursed for all and any greater maintenance liability it incurs by reason of the existence of a specified work (on the proviso that there will be no double recovery).

75.—(1) Subject to the provisions of this paragraph, the undertaker agrees to indemnify fully and hold harmless the GYPA from and against all charges, claims, demands, damages, expenses, liabilities, losses, third party liabilities and any other cost and expense of any nature or kind whatsoever (including any reasonable and proper legal and other professional costs incurred by the GYPA) (together, “losses”) suffered or reasonably incurred by the GYPA to the extent that any losses are caused by—

- (a) the construction, maintenance or failure of the authorised development, a specified work or a protective work, including any mechanical or other failure of the new bridge; or
- (b) any act or omission of the undertaker or of its officers, employees, servants, contractors or agents whilst engaged in—
 - (i) the construction or maintenance of a specified work or a protective work;
 - (ii) seeking to remedy any failure of a specified work or a protective work; or
 - (iii) the act of operating the opening mechanism of the new bridge.

(2) GYPA must mitigate any loss it may suffer or incur as a result of an event that may give rise to a claim under sub-paragraph (1).

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to any losses referred to in that sub-paragraph to the extent that they are—

- (a) attributable to the negligence or wilful misconduct of the GYPA or of its officers, employees, servants, contractors or agents; or
- (b) not within the reasonable control of the undertaker.

(4) The GYPA must give to the undertaker notice in writing of any losses for which the undertaker may be liable under this paragraph and no settlement or compromise of them may be made without the written consent of the undertaker.

76. Except as provided by this Order, nothing in this Order prejudices or derogates from any of the rights, powers and duties of the GYPA.