

## SCHEDULES

### SCHEDULE 11

#### PROTECTIVE PROVISIONS

#### PART 4

#### FOR THE PROTECTION OF NORTHUMBRIAN WATER LIMITED

**39.**—(1) For the protection of Northumbrian Water Limited the following provisions have effect, unless otherwise agreed in writing between the undertaker and Northumbrian Water Limited.

**40.** In this part of this schedule—

“alternative apparatus” means any temporary or permanent alternative apparatus adequate to enable Northumbrian Water to fulfil its statutory function in a manner no less efficient than previously;

“apparatus” means the following items within the Order limits (except where paragraph 47(7) applies)—

(a) in the case of Northumbrian Water’s water undertaking—

- (i) mains, pipes, wells, boreholes, tanks, service reservoirs, pumping stations or other apparatus, structure, tunnel, shaft or treatment works or accessories (as defined in section 219(1) (general interpretation) of the Water Industry Act 1991) belonging to or maintained or used by Northumbrian Water for the purposes of water supply; and
- (ii) any water mains or service pipes which are the subject of a notice of intention to adopt under section 51A(1) (agreements to adopt water main or service pipe at future date) of the Water Industry Act 1991; and

(b) in the case of Northumbrian Water’s sewerage undertaking—

- (i) any sewer, drain or disposal works vested in Northumbrian Water under the Water Industry Act 1991;
- (ii) any sewer, drain or disposal works which is so vested or is the subject of a notice of intention to adopt given under section 102(4) (adoption of sewers and disposal works) of that Act or an agreement to adopt made under section 104 (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 (as defined in section 219(1) of the Water Industry Act 1991) forming part of any such sewer, drain or works, and any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“emergency” means a situation which—

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(1) Section 51A was inserted by section 9291) of the Water Act 2003 (c. 37).

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- (c) is unexpected, in that there is little or no prior warning, or aspects of the event could not have reasonably been predicted in advance;
- (d) is a serious event presenting a risk of harm or damage to people, property or the environment; and
- (e) requires a need for urgent action, in that immediate action is required to address the risk of harm, repair or prevent a worsening of the situation;

“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;

“Northumbrian Water” means Northumbrian Water Limited, a company incorporated and registered in England and Wales with registered company number 02366703 whose registered office is at Northumbria House, Abbey Road, Pity Me, Durham DH1 5FJ;

“plan” includes all designs, drawings, specifications, method statements, soil reports, programmes, calculations, risk assessments and other documents that are reasonably necessary properly and sufficiently to describe the works to be executed.

#### *On street apparatus*

**41.** This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Northumbrian Water are regulated by the provision of Part 3 of the 1991 Act.

#### *Apparatus in stopped up streets*

**42.—(1)** Where any street is stopped up under article 16 (permanent stopping up and restriction of use of streets, public rights of way and private means of access), if Northumbrian Water has any apparatus in the street, Northumbrian Water is entitled to the same powers and rights in respect of that apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to Northumbrian Water legal easements reasonably satisfactory to Northumbrian Water in respect of such apparatus and access to it, but nothing in this paragraph affects any right of the undertaker or of Northumbrian Water to require the removal of that apparatus under paragraph 44 or the power of the undertaker to carry out works under paragraph 46.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 15 (temporary stopping up and restriction of use of streets), Northumbrian Water is at liberty at all times to take all necessary access across any such stopped up highway and to execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

#### *Protective works to buildings*

**43.** The undertaker, in the case of the powers conferred by article 21 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

#### *Acquisition of land*

**44.** Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

### *Removal of apparatus*

45.—(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 Northumbrian Water's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule, and any right of Northumbrian Water to maintain that apparatus in that land and to gain access to it must not be extinguished, until alternative apparatus has been constructed and is in operation, and access to it has been provided, to the reasonable satisfaction of Northumbrian Water in accordance with sub-paragraphs (2) to (8).

(2) If, for the purpose of executing 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 Northumbrian Water 56 days' written notice of that requirement, together with a plan 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 Northumbrian Water reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Northumbrian Water the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for access to and 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, after using all reasonable endeavours 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 Northumbrian Water 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) 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 Northumbrian Water and the undertaker both acting reasonably with a view to securing the efficient implementation of the necessary work, the avoidance of unnecessary delay and the continued fulfilment by both parties of their service obligations, which in the case of Northumbrian Water shall be to a standard no less than that achieved prior to the removal of the apparatus which the alternative apparatus replaces, or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) Northumbrian Water must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration), and after the grant to Northumbrian Water of any such facilities and rights as are referred to in sub-paragraphs 45(2) or 45(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.

(6) Regardless of anything in sub-paragraph 45(5), if the undertaker gives notice in writing to Northumbrian Water that the undertaker intends to execute any work, or part of any work in connection with the construction or removal of apparatus in any land of the undertaker, that work, instead of being executed by Northumbrian Water, may, subject to the written consent of Northumbrian Water, which shall not be unreasonably withheld, and in accordance with Northumbrian Water's requirements and specifications, be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Northumbrian Water.

(7) Nothing in sub-paragraph 45(6) authorises the undertaker to execute the placing, installation bedding, packing, removal, connection or disconnection of any apparatus, or execute the filling around the apparatus (where apparatus is laid in a trench) within 300 millimetres of apparatus.

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(8) When alternative apparatus is to be or is being substituted for existing apparatus, the undertaker shall, before taking or requiring any further step in such substitution works, use all reasonable endeavours to comply with Northumbrian Water's reasonable requests for a reasonable period of time to enable Northumbrian Water to:

- (a) make network contingency arrangements; or
- (b) bring such matters as it may consider reasonably necessary to the attention of end users of the utility in question.

#### *Facilities and rights for alternative apparatus*

**46.**—(1) Where, in accordance with the provisions of this part of this schedule, the undertaker affords to Northumbrian Water 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 are to be granted upon such reasonable terms and conditions as may be agreed between the undertaker and Northumbrian Water or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

- (2) In settling those terms and conditions in respect of alternative apparatus 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 the 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 the apparatus for which the alternative apparatus is to be substituted and have regard to Northumbrian Water's statutory obligations.

(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 Northumbrian Water 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 Northumbrian Water as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

(4) Such facilities and rights as are set out in this paragraph are deemed to include any statutory permits granted to the undertaker in respect of the apparatus in question, whether under the Environmental Permitting (England and Wales) Regulations 2016(2) or other legislation.

#### *Retained apparatus*

**47.**—(1) Not less than 56 days before starting the execution of any works in, on or under any land purchased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 45(2), the undertaker must submit to Northumbrian Water a plan, section and description of the works to be executed, together with an assessment of the impact of the works and proposed measures for the protection of Northumbrian Water's apparatus.

(2) Those works must be executed 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 Northumbrian Water for the alteration or otherwise

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(2) [S.I. 2016/1154](#) as amended by [S.I. 2017/1012](#), [S.I. 2017/1075](#), [S.I. 2018/110](#), [S.I. 2018/428](#) and [S.I. 2018/757](#).

for the protection of the apparatus and of its operation, or for securing access to it, and Northumbrian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Northumbrian Water 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) is submitted to it.

(4) If Northumbrian Water 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 39 to 41 and 44 to 46 apply as if the removal of the apparatus had been required by the undertaker under paragraph 45(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 execution 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 Northumbrian Water, 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) For the purposes of sub-paragraph (1), works are deemed to be in land near Northumbrian Water's apparatus (where it is a relevant pipe, as defined in section 158(7) (powers to lay pipes in streets) of the Water Industry Act 1991) if those works fall within the following distances measured from the edge of such apparatus—

- (a) where it is a water main—
  - (i) 3 metres where the diameter of the water main is up to and including 300 millimetres;
  - (ii) 4.5 metres where the diameter of the water main is greater than 300 millimetres, up to and including 600 millimetres; and
  - (iii) 6 metres where the diameter of the water main is greater than 600 millimetres; and
- (b) where it is a sewer, 6.5 metres.

#### *Expenses and costs*

**48.**—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Northumbrian Water all costs, charges and expenses which Northumbrian Water may reasonably incur or have to pay or which it may sustain in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in paragraph 45(2), including any costs reasonably incurred in connection with the acquisition of rights under paragraph 45(3) and in watching and inspecting the execution of works under paragraph 47(2) and in making reasonable requirements under paragraph 47(3).

(2) The value of any apparatus removed under the provisions of 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 the provisions of 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 except where this has been solely due to using the nearest currently available type; 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 situated

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except where the placing of apparatus at a different depth is required solely to achieve an equivalent capability and function to the existing apparatus,

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 46 (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 Northumbrian Water 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;
- (b) the provision of additional manholes, valves or wash-out pipes, where required to comply with design standards, must not be treated as a placing of apparatus of better type, of greater capacity or of greater dimensions than those of the existing apparatus; and
- (c) where the provision of a joint in a pipe or 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 Northumbrian Water in respect of works by virtue of sub-paragraph (1), if the works include the placing of apparatus provided in substitution for apparatus placed more than seven years and six months earlier so as to confer on Northumbrian Water any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

(6) Subject to sub-paragraphs (7) and (8), if by reason or in consequence of the construction, maintenance or failure of any of the authorised development by or on behalf of the undertaker or any such works referred to in paragraphs 43, 45(2) or 47(1), or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, or by reason of any subsidence resulting from such development or works, any damage is caused to any apparatus or alternative 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 Northumbrian Water, or there is any interruption in any service provided or of any access to any apparatus, or in the supply of any goods or services, by Northumbrian Water or the performance of Northumbrian Water's functions, or any disruption to the normal operation of Northumbrian Water's apparatus resulting in an increase in the costs incurred by Northumbrian Water in performing its functions or in any loss, damages or penalty or fines, or Northumbrian Water becoming liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by Northumbrian Water in making good such damage or restoring the supply or service;
- (b) make reasonable compensation for any loss sustained by Northumbrian Water; and
- (c) indemnify Northumbrian Water against claims, demands, proceedings, damages, penalty or costs incurred by or recovered from Northumbrian Water,

by reason or in consequence of any such damage or interruption or disruption or Northumbrian Water becoming liable to any third party as aforesaid.

(7) The fact that any act or thing may have been done by Northumbrian Water on behalf of the undertaker or in accordance with a plan approved by Northumbrian Water or in accordance with any requirement of Northumbrian Water or under its supervision does not, subject to paragraph 47(8), excuse the undertaker from liability under the provisions of paragraph 47(6).

(8) Nothing in paragraph 47(6) 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 Northumbrian Water, its officers, servants, contractors or agents.

(9) Northumbrian Water 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 who, if withholding such consent, has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(10) Any difference arising between the undertaker and Northumbrian Water under this Part of this Schedule must be referred to and settled by arbitration under article 46 (arbitration).

#### *Access*

**49.** If in consequence of the exercise of the powers conferred by the Order the access to any apparatus or land owned by Northumbrian Water and used by it for the purpose of its statutory functions is materially obstructed, the undertaker must provide such alternative means of access to that apparatus or land as will enable Northumbrian Water to maintain or use the apparatus or use the land for the purpose of its statutory functions no less effectively than was possible before the obstruction.

#### *Co-operation*

**50.—**(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or Northumbrian Water requires the removal of apparatus under paragraph 45(2) or Northumbrian Water makes requirements for the protection or alteration of apparatus under paragraph 47(2), the undertaker must use all reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of Northumbrian Water's undertaking and Northumbrian Water must use all reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Where the undertaker identifies any apparatus, which may belong to or be maintainable by Northumbrian Water but which does not appear on any statutory map kept for the purpose by Northumbrian Water, it shall inform Northumbrian Water of the existence and location of the apparatus as soon as reasonably practicable.

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