

SCHEDULES

SCHEDULE 16

Protective Provisions

PART 9

For the protection of Wales and West Utilities (“WWU”)

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

107. In this Part of this Schedule—

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

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by WWU for the purposes of gas supply and 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

“WWU” means Wales & West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ, a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽¹⁾.

108. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and WWU are regulated by the provisions of Part 3 of the 1991 Act.

109. 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.

110.—(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, that apparatus must not be removed under this Part of this Schedule and any right of WWU to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of WWU.

(2) If, for the purpose of executing any works authorised by this Order in, on, over, or under any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it must give to WWU 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 WWU reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to WWU the necessary facilities and rights for

(1) 1986 c. 44. Section 7 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).

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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, WWU 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, or agree with the undertaker an alternative route for the alternative apparatus over land in respect of which it is possible for the undertaker to obtain the relevant facilities and rights. For the avoidance of doubt, WWU shall not be obliged to exercise its compulsory purchase powers pursuant to the Gas Act 1986 in order to obtain any such facilities or rights and WWU shall retain an absolute discretion as to whether it shall choose to exercise those powers.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between WWU and the undertaker, or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

(5) WWU must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration as referred to in sub-paragraph (4) in accordance with article 56 (arbitration), and after the grant to WWU of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed as soon as reasonably practicable 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 (5), if the undertaker gives notice in writing to WWU that it desires itself 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 WWU, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of WWU.

(7) Nothing in sub-paragraph (6) authorises the undertaker to 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 300 millimetres of the apparatus.

111.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to WWU 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 terms and conditions as may be agreed between the undertaker and WWU or in default of agreement settled by arbitration in accordance with article 56 (arbitration).

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

- (a) give effect to all reasonable requirements of Network Rail and the undertaker for ensuring the safety and efficient operation of the railway which forms or is to form part of Network Rail's network and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the undertaker or the traffic on the railway; 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 constructed in or along the railway 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 WWU 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 WWU as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

112.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 110(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 110(2), the undertaker must submit to WWU a plan, section and description of the works to be executed.

(2) Those works are to 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 WWU for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and WWU is entitled to watch and inspect the execution of those works.

(3) Any requirements made by WWU under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If WWU 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 106 to 110 apply as if the removal of the apparatus had been required by the undertaker under paragraph 110(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 WWU notice as soon as reasonably practicable and a plan, section and description of those works as soon as reasonably practicable if possible before carrying out those works, or if not, as soon as reasonably practicable afterwards and must comply with sub-paragraph (2) in so far as is reasonably practicable in the circumstances.

(7) For the avoidance of doubt, whenever the undertaker carries out any works in the vicinity of any apparatus of WWU and whether or not WWU has made any requirements pursuant to sub-paragraph (2) above, the undertaker must comply with—

- (a) all applicable health and safety laws, including the Construction (Design and Management) Regulations 2015;
- (b) the Pipeline Safety Regulations 1996; and
- (c) the safety guidance published from time to time by WWU and the HSE.

113.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to WWU the reasonable expenses incurred by WWU in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including: costs or compensation payable in connection with the acquisition of land for that purpose; and any reasonable legal or other professional costs properly incurred relating to any such works to apparatus, or to the provision of alternative apparatus) which may be required in consequence of the execution of any such works as are referred to in paragraph 110(2).

(2) If in accordance with the provisions of this Part of this Schedule WWU require that alternative apparatus of better type, of greater capacity or of greater dimensions, or at a greater depth is necessary in substitution for existing apparatus which for WWU's requirements is over and above what is

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necessary as a consequence of and for the purpose of the authorised development WWU must deduct the cost of such additional requirements from the amount payable by the undertaker pursuant to sub-paragraph (1).

(3) For the purposes of sub-paragraph (2) 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.

(4) For the avoidance of doubt and subject to paragraph 108, the provisions of sub-paragraph (1) require the undertaker to repay the full costs of any works carried out to WWU's apparatus, or in order to protect that apparatus, or in consequence of any works carried out in the vicinity of that apparatus by the undertaker.

114.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works referred to in paragraph 110(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 WWU, or there is any interruption in any service provided, or in the supply of any goods, by WWU, the undertaker must—

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

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 WWU, its officers, servants, contractors or agents.

(3) WWU 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.

115. Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between the undertaker or Network Rail and WWU in respect of any apparatus laid or erected in land belonging to the undertaker or Network Rail on the date on which this Order is made.

116. The provisions of Part 2 of this Schedule do not apply in relation to WWU or any apparatus of WWU.