

## SCHEDULE 8

### PART 7

#### For the protection of Dŵr Cymru Cyfyngedig

##### Application

**80.** For the protection of the protected person, the following provisions, unless otherwise agreed in writing between the undertaker and the protected person, have effect.

##### Interpretation

**81.** In this Part—

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

“apparatus” means all apparatus or accessories vested in or belonging to the protected person for the purpose of carrying on its statutory undertaking including the outfall;

“authorised development” means the works set out in Parts 1A, 1B and 2 of Schedule 1 (authorised development, and ancillary and necessary works);

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

“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;

“outfall” means the existing long sea outfall pipeline from Swansea Bay Waste Water Treatment Works;

“outfall works” means Work No. 3 and such other works required for its provision under the powers of this Order;

“protected person” means Dŵr Cymru Cyfyngedig;

“specification” means the approved version of a draft specification considered by the protected person under paragraph 85 of this Part;

“specified works” means the outfall works and any work forming part of the authorised development in any land purchased, held, or used pursuant to the Order that is—

- (a) within 3m either side of the centre line of any public sewer or public water main that is less than 300mm in diameter;
- (b) within 6m either side of a public sewer or public water main where the public sewer or public water main is greater than 300mm in diameter;
- (c) within 9m either side of the centre line of a rising main; or
- (d) within 100m either side of the centre line of the outfall,

or which will or may in any way affect any apparatus together with all ancillary actions relating hereto; and

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

### **Consent not to be unreasonably withheld**

**82.** Where under any provision of this Part the consent or agreement of any person is required, such consent shall not be unreasonably withheld or delayed, may be given subject to reasonable conditions and may be given by the duly authorised representative of that person.

### **Water Industry Act 1991**

**83.** This Part does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 and Part 4 of the Water Industry Act 1991(1).

### **Written consent necessary**

**84.** Regardless of any provision in the Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or accessories or override or extinguish any easement or other interest of the protected person or acquire any land or other interest of the protected person or create any new rights over the same without the prior written consent of the protected person.

### **Protection of apparatus**

**85.—(1)** Without limiting the other provisions of this Part, before commencing the construction, replacement, renewal or removal of any specified work, and in the case of any specified work of a temporary nature its removal, the undertaker shall submit to the protected person a draft specification.

(2) For the purpose of the preparation of the draft specification and subject to such reasonable stipulations as it may require, the protected person shall as soon as reasonably practicable upon the undertaker’s reasonable request permit the undertaker to have reasonable access to such plans as it may have in its possession and to any of its land or apparatus.

(3) The protected person shall examine the draft specification submitted under sub-paragraph (1) and give its written consent or proposed amendments to the draft specification within 28 days from the date of receipt (and in the event of amendments, the process in this sub-paragraph shall be repeated where those amendments are not accepted) provided that where consent is neither given nor refused within 42 days of the submission of the draft specification (or such other time period agreed by the undertaker and the protected person acting reasonably) consent thereto shall be deemed to have been given. The undertaker shall not commence the specified works until written or deemed consent is provided by the protected person in accordance with this sub-paragraph.

(4) The conditions which may be imposed under any consent and relating to a specification given by the protected person hereunder include conditions as to—

- (a) the commencement date and completion date of the specified works;
- (b) the reasonable removal, extension or alteration of apparatus necessitated by the specified works;
- (c) works for the protection of apparatus necessitated as a result of the specified works;
- (d) provision for access to any apparatus;

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(1) 1991 c. 56.

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- (e) such works, provisions or methods as are reasonably necessary for the protection of the environment or the protection of the protected person from liability under the terms of any licence relating to its activities; and
  - (f) an advance warning system providing for liaison between the undertaker and the protected person in respect of potential performance operational issues affecting, or damage to, apparatus arising from the specified works.
- (5) The specified works shall be executed only—
- (a) in accordance with the specification;
  - (b) exercising the standard of skill and care reasonably to be expected of a skilled and experienced professional person engaged in undertakings of a similar scope, nature and complexity as the specified works; and
  - (c) in accordance with such reasonable conditions and requirements as may be imposed by the protected person,

and the protected person shall be entitled to watch and inspect the execution of the specified works.

(6) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time a draft specification to be implemented in substitution of the draft specification previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new draft specification, but the substituted draft specification shall not become the specification and may not be carried out without the consent or deemed consent of the protected person.

(7) The undertaker may not be required to comply with sub-paragraph (1) in a case of emergency provided it has complied with paragraph 88, save that the undertaker shall comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, after carrying out any specified works to which this sub-paragraph applies.

(8) The undertaker shall be responsible to the protected person for the reasonable expenses (including VAT) incurred by the protected person in, or in connection with, the inspection of the specified works or the apparatus, the protection of any apparatus or temporary works to be undertaken by the protected person (including in respect of examining the draft specification in accordance with sub-paragraph (3)).

(9) Where the protected person has apparatus that will be affected by the specified works (including the outfall), the undertaker shall determine the exact location of apparatus prior to any specified works being carried out by the undertaker.

(10) The undertaker shall not make any trial holes which interfere with any apparatus without the consent of the protected person.

(11) When works for the provision of any new, extended or altered apparatus or any protective work forming part of any such new, extended or altered apparatus, or existing apparatus, have been completed under this Part to the reasonable satisfaction of the protected person, they shall be vested in the protected person forthwith but shall be maintainable by the undertaker until a period of—

- (a) in the case of the outfall works, 24 months has elapsed and the protected person or an engineer appointed by the protected person has issued a certificate of final inspection of the new, altered or extended apparatus;
- (b) in the case of any other specified works which vest in the protected person in accordance with this paragraph, 12 months has elapsed and the protected person or an engineer appointed by the protected person has issued a certificate of final inspection of the new, altered or extended apparatus.

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## **Outfall**

86. Save as may be authorised under paragraph 85, the undertaker shall not take any action or permit any action to be taken which is likely to endanger the structural integrity of the outfall.

## **Suspension of specified works**

87.—(1) The protected person is entitled to instruct the undertaker to suspend the specified works (or any part of the specified works) if in the protected person's reasonable opinion the actions of the undertaker, or those of its contractors or subcontractors in carrying out the specified works otherwise than in accordance with the specification or the provisions in this Part have caused damage to any apparatus or are likely to cause or result in damage to any apparatus or damage to the environment that was not foreseen at the time of the approval of the specification. In the event of such an instruction being given by the protected person—

- (a) the undertaker shall procure that it and its contractors and subcontractors shall as soon as reasonably practicable and forthwith in case of urgency suspend or cease the specified works in each case having due regard to health and safety factors and shall discuss and agree with the protected person such remedial actions (which may include works) as may be required prior to resuming the specified works and the person who shall be responsible for the performance of such remedial actions;
- (b) the undertaker and the protected person shall act reasonably and without delay in discussing and agreeing any remedial actions required prior to resuming the specified works;
- (c) the protected person shall at such time as it issues any instruction under this paragraph submit to the undertaker immediately a written notice specifying the reasons for suspending the specified works;
- (d) in the event that the protected person fails to supply the written notice within 5 working days of the protected person's instruction to suspend, the instruction shall be void and the undertaker shall be entitled to recommence the specified works; and
- (e) where the protected person is responsible for any remedial action, it shall commence, carry out and complete such remedial actions pursuant to paragraph (a), as soon as reasonably practicable and the protected person shall give the undertaker notice immediately upon completion of such remedial works and on receipt of such notice the undertaker shall be entitled to resume the specified works.

(2) The protected person shall be entitled to reclaim all reasonable costs of all remedial actions attributable to any act or neglect of the undertaker in accordance with this paragraph.

## **Repair, maintenance and emergency works**

88.—(1) If in the reasonable opinion of the protected person repairs or maintenance works are necessary to apparatus within the Order limits, the undertaker shall as soon as reasonably practicable, and (without prejudice to sub-paragraph (3)) in case of emergency forthwith, but subject always to such reasonable conditions as the undertaker may impose, permit access to the protected person for both personnel and equipment and allow the protected person (or its agent) to carry out such repairs or maintenance works.

(2) The undertaker is permitted to carry out emergency works provided that it first notifies the protected person of this immediately and in the event that the protected person suffers any loss, cost or damage as a result of the emergency action taken by the undertaker without prior notification the provision in paragraph 91 shall apply.

(3) The protected person shall at all times be permitted to carry out any emergency works in relation to its apparatus at the development site in accordance with Part 2 of Schedule 6 to the Water Industry Act 1991.

### **Entry on protected person's land**

**89.**—(1) Regardless of the other provisions of this Part, the undertaker shall not access any land comprised in site 02055 as shown on the land plans (plan 2 of 18) (“the waste water treatment works”) without providing 14 days’ prior written notice.

(2) The undertaker shall comply with the health and safety requirements specified by the protected person whilst present on the site of the waste water treatment works.

### **Expenses**

**90.**—(1) Subject to the following provisions of this paragraph, the undertaker is liable to make good, or, if the protected person so decides, to repay to the protected person the reasonable expenses and costs (including without limitation legal and professional fees) reasonably incurred by the protected person in, or in connection with—

- (a) the inspection, removal and relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus under any provision of this Part (including any costs or compensation paid in connection with the acquisition of rights or land or the exercise of statutory powers for such apparatus);
- (b) the cutting off of any apparatus from any other apparatus, or the making safe of any redundant apparatus in consequence of the exercise by the undertaker of any power under this Order;
- (c) the survey of any land, apparatus or works, the inspection, superintendence and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the exercise by the undertaker of any power under this Order;
- (d) the preparation and completion of any deeds of transfer where the apparatus is abandoned rather than removed; and
- (e) any other work or thing rendered reasonably necessary in consequence of the exercise by the undertaker of any power under this Order,

within a reasonable time of being notified by the protected person that it has incurred such expenses.

(2) If in accordance with the provisions of this Part, 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 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 50 (arbitration) to be necessary, then, if such placing involves cost in the construction of works under this Part 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 protected person by virtue of paragraph 91(1) shall be reduced by the amount of that excess.

(3) For the purposes of paragraph 91(2) an extension of apparatus to a length greater than the length of existing apparatus shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus.

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### **Damage to apparatus**

**91.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any specified works referred to in this Part 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 the protected person, or there is any interruption in any service provided by the protected person, the undertaker shall to the extent possible in law—

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

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 the protected person, its officers, servants, contractors or agents.

(3) The protected person shall give the undertaker reasonable notice of any claim or demand from any third party arising out of or in connection with the specified works, and no settlement or compromise shall be made without the consent of the undertaker.

### **Enactments**

**92.** Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and the protected person in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which the Order is made.