

## SCHEDULES

### SCHEDULE 6

#### Protective Provisions

### PART 1

#### For the protection of Anglian Water Services Limited

#### **Application**

1. For the protection of Anglian Water the following provisions have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

#### **Interpretation**

2. In this Part of this Schedule—

“Act” means the Water Industry Act 1991;

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

“Anglian Water” means Anglian Water Services Limited;

“apparatus” means Anglian Water’s twin water mains running between Stamford Road, King’s Cliffe (at grid references TL0130899796 and TL0131499784 or thereabouts) and A43, Duddington (at grid references SK9888300433 and SK9888000429 or thereabouts, respectively) and includes:

- (a) any accessories (as defined by section 219 of the Act) forming part of it;
- (b) any structure in which apparatus is or is to be lodged or which gives or will give access to it; and
- (c) alternative 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;

“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;

#### **Acquisition of land**

3. Regardless of any provision in this Order, the undertaker must not acquire any apparatus otherwise than by agreement.

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## **Retained apparatus**

4.—(1) Not less than 28 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 (or any means of access to it) the removal of which has not been required by the undertaker in accordance with section 185 of the Act, the undertaker must submit to Anglian Water a plan of the works to be executed.

(2) Those works must be executed only (i) if approved by Anglian Water pursuant to sub-paragraph (3) below, (ii) in accordance with the plan submitted under sub-paragraph (1) and (iii) in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Anglian Water is entitled to watch and inspect the execution of those works.

(3) Any requirements made by Anglian Water under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it. The approval that may be given under that sub-paragraph must not be unreasonably withheld (although may be subject to the said requirements) and must be assumed to have been given unless Anglian Water gives written notice to the undertaker that it is being withheld entirely or given subject to the said requirements within the same time period.

(4) 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 instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(5) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case must give to Anglian Water notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph (3) in so far as is reasonably practicable in the circumstances, using its best endeavours to keep the impact of those emergency works on Anglian Water's apparatus, on the operation of its water and sewerage network and on end-users of the services Anglian Water provides to a minimum.

(6) For the purposes of sub-paragraph (1) and without prejudice to the generality of the principles set out in that sub-paragraph—

- (a) the establishment of an access way or haul road and underground works are both deemed to be “works” for the purposes of this paragraph; and
- (b) works are deemed to be in land near Anglian Water's apparatus if those works fall within 20 metres measured from the medial line of the closer of the two water mains forming such apparatus to the works in question.

## **Expenses and costs**

5.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water 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 this Part of this Schedule.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Part of this Schedule 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; 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, 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 20 (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 Anglian Water by virtue of sub-paragraph (1) must 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 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.

6.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of—

- (a) the construction of any works of authorised development for which development consent is granted by this Order;
- (b) any subsidence resulting from such works or development; or
- (c) any leakage, leachate or radiation resulting from such works or development;

any contamination or 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), any medium conveyed by such apparatus or any 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 such damage or restoring the supply; and
- (b) make reasonable compensation to Anglian Water for any other expenses, loss, damages, penalty (whether legal, regulatory or in relation to regulatory funding) or costs incurred by the undertaker;

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

(2) The fact that any act or thing may have been done by Anglian Water on behalf of the undertaker or in accordance with a plan approved by Anglian Water or in accordance with any requirement of Anglian Water or under its supervision does not, subject to sub-paragraph (3), excuse the undertaker from liability under the provisions of sub-paragraph (1) unless Anglian Water fails to carry out and execute the works properly with due care and attention and in a skilful and professional like manner or in a manner that does not accord with the approved plan.

(3) Nothing in sub-paragraph (1) imposes any liability on the undertaker with respect to:

- (a) any damage or interruption to the extent that it is attributable to the unlawful or unreasonable act, neglect or default of Anglian Water, its officers, servants, contractors or agents;
- (b) any part of the authorised development carried out by Anglian Water in the exercise of any functions conferred by this Order pursuant to a transfer of benefit under article 7; or

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- (c) any indirect or consequential loss of any third party (including but not limited to loss of use, revenue, profit, contract, production, increased cost of working) arising from any such damage or interruption, which is not reasonably foreseeable.
- (4) Anglian 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 (such consent not to be unreasonably withheld or delayed) 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.
- (5) Anglian Water must act reasonably in relation to any claim or demand served under sub-paragraph (1) and use its reasonable endeavours to mitigate and to minimise any costs, expenses, loss, demands and penalties to which a claim or demand under sub-paragraph (1) applies.

### **Cooperation**

7.—(1) Where in consequence of the proposed construction of any of the authorised development, Anglian Water makes requirements for the protection or alteration of apparatus under paragraph 4, 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 Anglian Water’s undertaking, using existing processes where requested by Anglian Water, provided it is appropriate to do so, and Anglian 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 Anglian Water but which does not appear on any statutory map kept for the purpose by Anglian Water, it must inform Anglian 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 Anglian Water in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

(4) The undertaker and Anglian Water may by written agreement substitute any period of time for those periods set out in this Part of this Schedule.

### **Monitoring**

8.—(1) Where in relation to the proposed construction of any of the authorised development, Anglian Water reasonably requires leak detection monitoring and/or monitoring of the water level in the pipe bedding material to be installed (“pipe bedding monitoring”), and gives written notice to the undertaker of that requirement, the following provisions of this paragraph apply—

- (a) Any leak detection monitoring and pipe bedding monitoring to be installed in land of the undertaker under this Part of this Schedule must be constructed in such manner and in such situation as may be agreed between Anglian Water and the undertaker or in default of agreement settled by arbitration in accordance with article 20 (arbitration).
- (b) Anglian Water must, after the leak detection monitoring and pipe bedding monitoring to be installed has been agreed or settled by arbitration in accordance with article 20, and after the grant to Anglian Water of any such necessary facilities and rights over the land, proceed without unnecessary delay to construct and bring into operation the agreed leak detection monitoring and pipe bedding monitoring.
- (c) The undertaker must repay to Anglian Water all expenses reasonably incurred by Anglian Water in, or in connection with, the installation of any leak detection and pipe bedding monitoring apparatus.
- (d) If Anglian Water gives notice in writing to the undertaker that it desires the undertaker to execute any work, or part of any work in connection with the installation of leak detection

or pipe bedding monitoring apparatus or the undertaker and Anglian Water otherwise agree, that work, instead of being executed by Anglian Water, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of Anglian Water at the cost of the undertaker.

- (e) Anglian Water must share all monitoring data arising from the installation of the leak detection monitoring and pipe bedding monitoring with the undertaker on a quarterly basis.

### **Expert Determination**

9.—(1) Article 20 (arbitration) must apply to any difference as to the legal interpretation of this Schedule and as provided for in paragraph 4(3).

(2) Save as provided for in sub-paragraph (1) or sub-paragraph 4(3) any difference under this Part of this Schedule must be referred to and settled by a single independent and suitable person who holds appropriate professional qualifications and is a member of a professional body relevant to the matter in dispute acting as an expert, such person to be agreed by the differing parties or, in the absence of agreement, identified by the President of the Institution of Civil Engineers or the President of the Institution of RICS or the President of the Institution of Engineering and Technology (as relevant and agreed between Anglian Water and the undertaker, both acting reasonably and without delay).

(3) All parties involved in settling any difference must use best endeavours to do so within 14 days from the date of a dispute first being notified in writing by one party to the other and in the absence of the difference being settled within that period the expert must be appointed within 21 days of the notification of the dispute.

(4) The costs and fees of the expert and the costs of Anglian Water and the undertaker are payable by the parties in such proportions as the expert may determine. In the absence of such determination the costs and fees of the expert are payable equally by the parties who must each bear their own costs.

(5) The expert must—

- (a) invite the parties to make submission to the expert in writing and copied to the other party to be received by the expert within 14 days of the expert's appointment;
- (b) permit a party to comment on the submissions made by the other party within 7 days of receipt of the submission;
- (c) issue a decision within 14 days of receipt of the submissions under sub-paragraph (b); and
- (d) give reasons for the decision.

(6) The expert must consider where relevant—

- (a) the development outcome sought by the undertaker;
- (b) the ability of the undertaker to achieve its outcome in a timely and cost-effective manner;
- (c) the nature of the power sought to be exercised by the undertaker;
- (d) the effectiveness, cost and reasonableness of proposals for mitigation arising from any party;
- (e) Anglian Water's service obligations and licence conditions; and
- (f) any other important and relevant consideration.

(7) Any determination by the expert is final and binding, except in the case of manifest error in which case the difference that has been subject to expert determination may be referred to and settled by arbitration under article 20.