

SCHEDULE 12

Protective provisions

PART 6

Protection for Anglian Water Services Limited

1. The provisions of this Part have effect for the protection of Anglian Water unless otherwise agreed in writing between the undertaker and Anglian Water.

2. In this Part—

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

“Anglian Water” means Anglian Water Services Limited (company number 02366656);

“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;
- (b) any drain or works vested in Anglian Water under the Water Industry Act 1991; and
- (c) any sewer that is so vested or is the subject of a notice of intention to adopt given under section 102(4) of that Act or an agreement to adopt made under section 104 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 of that Act) and any structure in which apparatus is or will 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 on land;

“plan” includes section, drawing, specification and method statement;

“relevant undertaker” means—

- (a) in relation to works that are Project A works or associated development or ancillary works relating to Project A works, Optimus Wind;
- (b) in relation to works that are Project B works or associated development or ancillary works relating to Project B works, Breesea; and
- (c) in relation to works that are shared works or associated development or ancillary works relating to shared works, Optimus Wind and Breesea.

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

4.—(1) The relevant undertaker must not—

- (a) execute any works that interfere with, build over or are near to any apparatus within the Order land;
- (b) execute the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus; or
- (c) where the apparatus is laid in a trench, execute any filling around the apparatus within the standard protection strips, which are the strips of land falling the following distances to either side of the medial line of any apparatus—

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- (i) 2.25 metres, where the diameter of the pipe is less than 150 millimetres;
- (ii) 3 metres, where the diameter of the pipe is 150 millimetres or more but less than 450 millimetres;
- (iii) 4.5 metres, where the diameter of the pipe is 450 millimetres or more but less than 750 millimetres; and
- (iv) 6 metres, where the diameter of the pipe is 750 millimetres or more,

unless the relevant undertaker has submitted to Anglian Water, not less than 28 days before starting the execution of any works, a plan and description of the works to be executed.

(2) The works must be executed only in accordance with the plan 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 Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and an officer of Anglian Water is entitled to watch and inspect the execution of the 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 and description under sub-paragraph (1) are submitted to it.

(4) Nothing in this paragraph precludes the relevant 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 and description instead of the plan and description previously submitted, and once the relevant undertaker has done so the provisions of this paragraph apply to and in respect of the new plan and description.

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

(6) It is reasonable for Anglian Water to require that the placing, installation, bedding, packing, removal, connection or disconnection of any apparatus, or the filling around the apparatus (where the apparatus is laid in a trench) be executed by Anglian Water.

(7) Anglian Water must execute any requirement made under sub-paragraph (6) in a timely manner.

5. The alteration, extension, removal or relocation of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting (England and Wales) Regulations 2010 or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such relocation are obtained, such approvals or agreements from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the relevant undertaker has given to Anglian Water written notice of its requirement to alter, extend, remove or relocate apparatus together with a plan and description of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed, and such works to be executed only in accordance with the plan and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

6. If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the relevant undertaker, Anglian Water must, on receipt of a written notice to that effect

from the relevant undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

7. Any alternative apparatus to be constructed in land of the relevant undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between Anglian Water and the relevant undertaker or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

8.—(1) Where, in exercise of the powers conferred by this Order,—

- (a) the relevant undertaker acquires any interest in any land in which apparatus is placed; and
- (b) the apparatus is to be relocated, extended, removed or altered in any way,

no alteration or extension may 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.

(2) Anglian Water must use reasonable endeavours to establish contingency arrangements in a timely manner.

9. Despite any provision in this Order or anything shown on any plan, the relevant undertaker must not acquire any apparatus otherwise than by agreement; and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the relevant 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, and to be subject to arbitration under article 41.

10. If, in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed, the relevant undertaker must provide such alternative means of access to the apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before the obstruction.

11. If, in consequence of the exercise of the powers conferred by this Order, previously unmapped sewers, lateral drains or other apparatus are identified by the relevant undertaker, notification of the location of such assets must be given to Anglian Water as soon as reasonably practicable and, if identified by Anglian Water as being within its responsibility, must be afforded the same protection as other Anglian Water assets.

12. If, for any reason or in consequence of the construction of any of the works referred to in paragraphs 4 to 9 and 11, 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 relevant 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 properly and reasonably incurred by Anglian Water,

by reason or in consequence of the damage or interruption.

13. The relevant undertaker must pay to Anglian Water the reasonable expenses incurred by Anglian Water in executing the works reasonably required under paragraph 4(6) and paragraph 5 and in complying with a written notice under paragraph 6.

14. Nothing in paragraph 12 imposes any liability on the relevant 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 officer, servants, contractors or agents.

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15. Any difference or dispute arising between the undertaker and Anglian Water under this Part must, unless otherwise agreed in writing between the undertaker and Anglian Water, be determined by arbitration in accordance with article 41.