

SCHEDULES

SCHEDULE 6

PROTECTIVE PROVISIONS

PART IV

PROTECTION FOR SEWERAGE UNDERTAKERS

Interpretation

1.—(1) In this Part of this Schedule—

“construction” includes placing, alteration and reconstruction; and “construct” and “constructed” shall be construed accordingly;

“plans” includes sections, specifications and method statements;

“sewer” means a public sewer within the meaning of the Water Industry Act 1991(1), and includes a disposal main within the meaning of that Act and any manholes, ventilating shafts, pumps or accessories forming part of any such sewer; but the provisions of paragraphs 4 to 9 do not apply to any sewer in respect of which relations between the Council and the undertaker are regulated by the provisions of Part III of the 1991 Act;

“specified work” means so much of any of the authorised works as is situated over, or within 15 metres of, or (wherever situated) imposes any load directly upon, any sewer; and

“the undertaker” means the sewerage undertaker for the area within which the authorised works are situated or whose sewers are affected by those works.

(2) The provisions of Schedule 5 to this Order shall not apply in relation to apparatus to which this Part of this Schedule applies.

Temporarily stopped up streets etc.: maintenance of sewers

2. Notwithstanding the temporary stopping up or diversion of any highway pursuant to article 9, the undertaker shall be at liberty at all times to construct 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, protect or use any sewer which at the time of the stopping up or diversion was in that highway.

Acquisition of sewers

3. Notwithstanding anything in this Order or shown on the deposited plans the Council shall not acquire any sewer otherwise than by agreement.

(1) 1991 c. 56.

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Protection of sewers

4.—(1) Before commencing the construction or renewal of any specified work, and in the case of any temporary work its removal, the Council shall submit to the undertaker plans for those works as described in sub-paragraph (2) and shall not commence that work until the undertaker has signified in writing its approval of those plans.

(2) The plans to be submitted to the undertaker shall be detailed plans describing the position and manner in which, and the level at which, any specified work is proposed to be constructed and the position of all sewers of the undertaker within 15 metres of that work or upon which the specified work will impose a load, and shall include detailed drawings of every alteration which the Council may propose to any such sewers.

(3) For the purpose of the preparation of the plans, and subject to such reasonable requirements as it may specify, the undertaker shall permit the Council to have access to plans in its possession and to any of its sewers.

(4) Any approval of the undertaker required under this paragraph—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5),
- (b) shall not be unreasonably withheld, and
- (c) shall be deemed to have been given if it is neither given nor refused within 56 days of the submission of plans for approval.

(5) The undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing the sewerage system of the undertaker against interference or risk of damage or providing or securing proper and convenient means of access to any sewer.

5.—(1) The specified work shall be constructed or, in the case of any temporary work removed, in accordance with the plans approved, or deemed to have been approved, or settled by arbitration, as the same may be amended from time to time by agreement between the Council and the undertaker; and in the construction or removal of the specified work the Council shall comply with all reasonable requirements of the undertaker and shall provide new, altered or substituted sewers or works for the protection of any sewers of the undertaker, in such manner as the undertaker may reasonably require, by way of replacement provision for or for the proper protection of, and for preventing injury or impediment to, any such sewer by reason of any specified work.

(2) All works under sub-paragraph (1), for the provision of new, altered or substituted sewers or the protection of any sewers of the undertaker shall, where so required by the undertaker, be constructed by the undertaker or under the supervision (if given) of an officer of the undertaker duly appointed for the purpose, and all costs, charges and expenses reasonably incurred by the undertaker in the construction of such works, or in the preparation or examination of plans or designs of such works, or in such supervision, shall be paid to the undertaker by the Council.

(3) When works for the provision of any such new, altered or substituted sewer, or any such protective work forming part of any such new, altered or substituted sewer or any existing sewer of the undertaker, have been completed under this Part of this Schedule to the reasonable satisfaction of the undertaker, they shall be vested in and shall become maintainable by the undertaker.

6. As soon as reasonably practicable after the completion of the construction of the specified works, the Council shall deliver to the undertaker a plan and section showing the position and level of those works as constructed and all new, altered or substituted works provided under this Part of this Schedule.

Repayment of undertaker's expenses

7. Subject to the following provisions of this paragraph, the Council shall be liable to make good, or, if the undertaker so decides, to repay to the undertaker any expense reasonably incurred by the undertaker in making good, all injury or damage to any sewers, drains or works vested in the undertaker (except in so far as such sewer, drain or work is intended for alteration or removal for the purposes of the specified work) caused by or resulting from the construction of any specified work or any investigation undertaken in relation to any specified work and the provision of any new, altered or substituted sewer or any protective work under this Part of this Schedule and shall pay to the undertaker any additional expense to which it may be put in the maintenance, management or renewal of any new, altered or substituted sewer which may be necessary in consequence of the construction of any specified work.

Indemnity

8.—(1) The Council shall indemnify the undertaker against all actions, claims, demands, costs, expenses, damages or loss which may be made on or against the undertaker which the undertaker may incur or have to pay or which it may sustain in consequence of the construction of any specified work or of the failure or want of repair of any specified work or any subsidence caused by the construction of any specified work or in consequence of any act or omission of the Council, its contractors, agents, workmen or servants, whilst engaged upon the specified work and any new, altered or substituted sewer or any protective work.

(2) The undertaker shall give to the Council reasonable notice of any such claim or demand as aforesaid and no settlement or compromise thereof shall be made without the agreement in writing of the Council.

(3) If in pursuance of the provisions of this Part of this Schedule—

- (a) a sewer of better type, of greater capacity or of greater dimensions is placed in substitution for an existing sewer of worse type, of smaller capacity or of smaller dimensions, except where this is due to using the nearest currently available type; or
- (b) a sewer (whether an existing sewer or a sewer substituted for an existing sewer) is placed at a depth greater than the depth at which the existing sewer was,

and the placing of a sewer of that type or capacity or of those dimensions or the placing of a sewer at that depth, as the case may be, is not agreed by the Council or, in default of agreement, is not determined by arbitration to be necessary, then, if it involves cost in the construction of works under this Part of this Schedule exceeding that which would have been involved if the sewer 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 paragraph would be payable to the undertaker by virtue of sub-paragraph (1) shall be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3) an extension of a sewer to a length greater than the length of an existing sewer shall not be treated as a placing of a sewer of greater dimensions than those of the existing sewer.

(5) An amount which apart from this sub-paragraph would be payable to the undertaker in respect of works by virtue of sub-paragraph (1) (and having regard, where relevant, to sub-paragraph (3)) shall, if the works involve the placing of a sewer provided in substitution for a sewer placed more than 7 years and 6 months earlier so as to confer on the undertaker any financial benefit by deferment of the time for renewal of the sewer in the ordinary course, be reduced by the amount which represents that benefit.

9. Nothing in paragraph 7 or 8 shall impose any liability on the Council in respect of any damage to the extent that it is attributable to the act, neglect or default of the undertaker, its officers, servants, or, if not the Council, its contractors or agents.

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