

SCHEDULE 8

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

Application

1. For the protection of the undertakers referred to in this Part, the following provisions shall, unless otherwise agreed in writing between the promoter and the undertaker concerned, have effect.

Interpretation

2. In this Part—

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

“apparatus” means—

- (a) in the case of an undertaker referred to in sub-paragraph (a) of the definition of “undertaker”, electric lines or electrical plant (as defined in the Electricity Act 1989⁽¹⁾), belonging to or maintained by that undertaker;
- (b) in the case of an undertaker referred to in sub-paragraph (b) of the definition of “undertaker”, any mains, pipes or other apparatus belonging to or maintained by a gas transporter for the purposes of gas supply;
- (c) in the case of an undertaker referred to in sub-paragraph (c) of the definition of “undertaker”, mains, pipes or other apparatus belonging to or maintained by that undertaker for the purposes of water supply; and
- (d) in the case of an undertaker referred to in sub-paragraph (d) of the definition of “undertaker”—
 - (i) any drain or works vested in the undertaker under the Water Industry Act 1991⁽²⁾ and Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011; and
 - (ii) any sewer which 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 (within the meaning of section 219 of that Act) or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any such sewer, drain or works,

and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“commence” has the same meaning as in paragraph 1 of Schedule 9 (Requirements);

“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, across, along or upon land;

(1) 1989 c. 29.

(2) 1991 c. 56.

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“plan” includes a section and description of the works to be executed;

“promoter” means the undertaker as defined in article 2 of this Order;

“undertaker” means—

(a) any licence holder within the meaning of Part 1 of the Electricity Act 1989;

(b) a gas transporter within the meaning of Part 1 of the Gas Act 1986⁽³⁾;

(c) a water undertaker within the meaning of the Water Industry Act 1991; and

(d) a sewerage undertaker within the meaning of Part 1 of the Water Industry Act 1991,

for the area of the authorised development, and in relation to any apparatus, means the undertaker to whom it belongs or by whom it is maintained;

“United Utilities” means United Utilities PLC (company number 02366616) whose registered address is Haweswater House, Lingley Mere Business Park, Lingley Green Avenue, Great Sankey, Warrington, WA5 3LP.

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

Temporarily stopped up streets

4. Notwithstanding the temporary stopping up or diversion of any streets or highway under the powers in article 12 (temporary stopping up of streets and rights of way), an undertaker shall be at liberty at all times to execute 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, renew or use any apparatus which at the time of the stopping up or diversion was in that highway.

Protective works to buildings

5.—(1) The promoter, in the case of the powers conferred by article 16 (protective work to buildings), shall, so far as is reasonably practicable, so exercise those powers as not to obstruct or render less convenient the access to any apparatus and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of any undertaker or any interruption in the supply of electricity, gas or water, as the case may be, by the undertaker is caused, the promoter shall bear and pay the cost reasonably incurred by that undertaker in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

(a) make reasonable compensation to the undertaker for any loss sustained by it; and

(b) indemnify the undertaker against all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that undertaker, by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on the promoter with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of an undertaker or its contractors or workers; and the undertaker shall give to the promoter reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent of the promoter.

Acquisition of apparatus

6. Notwithstanding any provision in this Order or anything shown on the land plans, the promoter shall not acquire any apparatus otherwise than by agreement.

(3) 1986 c. 44.

Removal of apparatus

7.—(1) If, in the exercise of the powers conferred by this Order, the promoter acquires any interest in any land in which any apparatus is placed, that apparatus shall not be removed under this Part and any right of an undertaker to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the undertaker in question.

(2) If, for the purpose of executing any works in, on or under any land purchased, held, appropriated or used under this Order, the promoter requires the removal of any apparatus placed in that land, it shall give to the undertaker in question written notice of that requirement, together with a plan 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 an undertaker reasonably needs to remove any of its apparatus) the promoter shall, subject to sub-paragraph (3), afford to the undertaker the necessary—

(a) facilities and rights for the construction of alternative apparatus in other land of the promoter; and

(b) subsequently facilities and rights 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 promoter, or the promoter 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, the undertaker in question shall, on receipt of a written notice to that effect from the promoter, 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.

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

(5) The undertaker in question shall, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 41 (arbitration), and after the grant to the undertaker of any such facilities and rights as are referred to in sub-paragraph (2) or (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the promoter to be removed under the provisions of this Part.

(6) Notwithstanding anything in sub-paragraph (5), if the promoter gives notice in writing to the undertaker in question 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 promoter, that work, instead of being executed by the undertaker, shall be executed by the promoter without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the undertaker.

(7) Nothing in sub-paragraph (6) shall authorise the promoter 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.

Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this Part, the promoter affords to an undertaker facilities and rights for the construction, use, maintenance, renewal and inspection in land of the promoter of alternative apparatus in substitution for apparatus to be removed, those facilities and rights shall be granted upon such terms and conditions as may be agreed between the promoter and the undertaker in question or in default of agreement settled by arbitration in accordance with article 41 (arbitration).

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(2) In settling the terms and conditions mentioned in respect of alternative apparatus to be constructed in the authorised development, the arbitrator shall—

- (a) give effect to all reasonable requirements of the promoter for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the authorised development, its safety or its efficient operation; 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 the authorised development for which the alternative apparatus is to be substituted.

(3) If the facilities and rights to be afforded by the promoter 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 more or less favourable on the whole to the undertaker in question 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 shall make such provision for the payment of compensation to or by the promoter by or to that undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus: protection

9.—(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 7(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the promoter under paragraph 7(2), the promoter shall submit to the undertaker in question a plan.

(2) In relation to works which will or may be situated over or within 15 metres measured in any direction of, or (wherever situated) impose any load directly upon any sewer, the plan to be submitted to the undertaker under sub-paragraph (1) shall be detailed and describe—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal;
- (d) the position of all sewers within 15 metres of the works or upon which the works will impose a load; and
- (e) by way of detailed drawings, every alteration proposed to be made to any such sewer.

(3) The promoter shall not commence the construction or renewal of any works to which sub-paragraph (2) applies until the undertaker has given written approval of the plan so submitted.

(4) Any approval of the undertaker required under sub-paragraph (2)—

- (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) In relation to a work to which sub-paragraph (2) applies, the specified undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its sewerage system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any sewer.

(6) Works of the type referred to in paragraph 7(2) shall be executed only in accordance with the plan, submitted under sub-paragraph (1) (and in the case of a plan relating to sewers, in accordance with the plan approved or deemed to have been approved under sub-paragraph (4) or settled by arbitration in accordance with article 41 (arbitration), as amended from time to time by agreement

between the promoter and the undertaker) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (7) by the undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the undertaker shall be entitled to watch and inspect the execution of those works.

(7) Any requirements made by an undertaker under sub-paragraph (6) shall be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) is submitted to it.

(8) If an undertaker in accordance with sub-paragraph (7) and in consequence of the works proposed by the promoter, reasonably requires the removal of any apparatus and gives written notice to the promoter of that requirement, paragraphs 1 to 3 and 5 to 8 shall apply as if the removal of the apparatus had been required by the promoter under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the promoter 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 shall apply to and in respect of the new plan.

(10) The promoter shall not be required to comply with sub-paragraph (1) in a case of emergency but in that case it shall give to the undertaker in question notice as soon as is reasonably practicable and a plan of those works as soon as reasonably practicable thereafter and shall comply with sub-paragraph (6) insofar as is reasonably practicable in the circumstances.

Expenses

10.—(1) Subject to the following provisions of this paragraph, the promoter shall repay to an undertaker the reasonable expenses incurred by that undertaker 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 paragraph 7(2).

(2) There shall 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—

- (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 promoter or, in default of agreement, is not determined by arbitration in accordance with article 41 (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 undertaker in question by virtue of sub-paragraph (1) shall 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 shall not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and

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- (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 shall be treated as if it also had been agreed or had been so determined.

(5) An amount which apart from this sub-paragraph would be payable to an undertaker in respect of works by virtue of sub-paragraph (1) shall, if the works include the placing of apparatus provided in substitution for apparatus 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 apparatus in the ordinary course, be reduced by the amount which represents that benefit.

Indemnity

11.—(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 7(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 an undertaker, or there is any interruption in any service provided, or in the supply of any goods, by any undertaker, the promoter shall—

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

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

(2) Nothing in sub-paragraph (1) shall impose any liability on the promoter with respect to any damage or interruption to the extent that it is attributable to the act, neglect or default of an undertaker, its officers, servants, contractors or agents.

(3) An undertaker shall give the promoter reasonable notice of any such claim or demand and no settlement or compromise shall be made without the consent of the promoter which, if it withholds such consent, shall have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Ground subsidence monitoring scheme in respect of United Utilities' apparatus

12.—(1) No works comprised in Work No. 1A in Schedule 1 (authorised development) shall commence until a scheme for monitoring ground subsidence (referred to in this paragraph as the “monitoring scheme”) which is capable of interfering with or risking damage to United Utilities' apparatus has been submitted to and approved by United Utilities, such approval not to be unreasonably withheld or delayed.

(2) The monitoring scheme shall set out—

- (a) the apparatus of United Utilities which is to be subject to such monitoring;
- (b) the extent of land to be monitored;
- (c) the manner in which ground levels are to be monitored;
- (d) the timescales of any monitoring activities; and
- (e) the extent of ground subsidence which, if exceeded, shall require the promoter to submit for United Utilities' approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (4).

(3) The monitoring scheme must be implemented as approved, unless otherwise agreed in writing with United Utilities.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e),

a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a “mitigation scheme”) shall be submitted to United Utilities for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with United Utilities.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any ground subsidence monitoring scheme or ground subsidence mitigation scheme approved by the relevant planning authority pursuant to paragraph 35 of Schedule 9 (Requirements) the promoter may submit a revised monitoring scheme or mitigation scheme to United Utilities for its approval, such approval not to be unreasonably withheld or delayed; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with United Utilities.

Enactments and agreements

13. Nothing in this Part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the promoter and an undertaker in respect of any apparatus laid or erected in land belonging to the promoter on the date on which this Order is made.

Co-operation

14. Where in consequence of the proposed construction of any of the authorised development, the promoter or an undertaker requires the removal of apparatus under paragraph 7(2) or an undertaker makes requirements for the protection or alteration of apparatus under paragraph 9(6), the promoter shall use its best 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 each undertaker shall use its best endeavours to co-operate with the promoter for that purpose.

Access

15. If in consequence of the exercise of the powers of this Order the access to any apparatus is materially obstructed, the promoter shall provide such alternative means of access to such apparatus as will, so far as reasonably practicable, enable the undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

16. Any difference or dispute arising between the promoter and an undertaker under this Schedule shall, unless otherwise agreed in writing between the promoter and that undertaker, be determined by arbitration in accordance with article 41 (arbitration).