

SCHEDULE 10

Protective provisions

PART 1

For the protection of electricity, gas, water and sewerage undertakers

Application

1. For the protection of the statutory undertakers referred to in this Part of this Schedule (save for Anglian Water and Centrica which are protected by Parts 4 and 5 of this Schedule) the following provisions, unless otherwise agreed in writing at any time between the undertaker and the statutory undertaker concerned, have effect.

Commencement Information

II Sch. 10 Pt. 1 para. 1 in force at 15.9.2016, see [art. 1](#)

Interpretation

2. In this Part of this Schedule—

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

“apparatus” means—

- (a) in the case of an electricity statutory undertaker, electric lines or electrical plant (as defined in the 1989 Act, belonging to or maintained by that electricity statutory undertaker for the purposes of electricity supply;
- (b) in the case of a gas statutory undertaker, any mains, pipes or other apparatus belonging to or maintained by that gas transporter for the purposes of gas supply;
- (c) in the case of a water statutory undertaker, mains, pipes or other apparatus belonging to or maintained by that water statutory undertaker for the purposes of water supply; and
- (d) in the case of a sewerage statutory undertaker—
 - (i) any drain or works vested in the statutory undertaker under the Water Industry Act 1991 and Water Industry (Schemes for Adoption of Private Sewers) Regulations 2011(1); 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 in each case 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;

“functions” includes powers and duties;

(1) [S.I. 2011/1566](#).

Changes to legislation: There are currently no known outstanding effects for the The River Humber Gas Pipeline Replacement Order 2016, PART 1. (See end of Document for details)

“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;

“pipeline” means the whole or any part of a pipeline belonging to or maintained by an statutory undertaker and includes any ancillary works and apparatus;

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

“statutory undertaker” means—

- (e) any licence holder within the meaning of Part 1 of the 1989 Act;
- (f) a gas transporter within the meaning of Part 1 of the Gas Act 1986(2);
- (g) a water statutory undertaker within the meaning of the Water Industry Act 1991; and
- (h) a sewerage statutory undertaker within the meaning of Part 1 of the Water Industry Act 1991,

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

Commencement Information

I2 Sch. 10 Pt. 1 para. 2 in force at 15.9.2016, see [art. 1](#)

On-street apparatus

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

Commencement Information

I3 Sch. 10 Pt. 1 para. 3 in force at 15.9.2016, see [art. 1](#)

Acquisition of apparatus

4. Regardless of any provision in this Order or anything shown on the land plans, the undertaker must not acquire any apparatus otherwise than by agreement.

Commencement Information

I4 Sch. 10 Pt. 1 para. 4 in force at 15.9.2016, see [art. 1](#)

Removal of apparatus

5.—(1) If, in the exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which any apparatus is placed, that apparatus must not be removed under this Part of this Schedule and any right of a statutory undertaker to maintain that apparatus in that land must not be extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the statutory 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 undertaker requires the removal of any apparatus placed

(2) [1986 c.44.](#)

in that land, it must give the statutory undertaker in question written notice of that requirement, together with a plan of the work proposed.

(3) If alternative apparatus or any part of such apparatus is to be constructed as a consequence of the removal of apparatus placed on the land referred to in sub-paragraph (2), the statutory undertaker in question must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best endeavours to obtain the necessary facilities and rights in other land in which the alternative apparatus is to be constructed.

(4) The statutory undertaker in question must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46 (arbitration), and after the grant to the statutory undertaker of any such facilities and rights as are referred to in sub-paragraph (3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove any apparatus required by the undertaker to be removed under the provisions of this Part of this Schedule.

(5) Regardless of anything in sub-paragraph (4), if the undertaker gives notice in writing to the statutory 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, that work, instead of being executed by the statutory undertaker, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the statutory undertaker.

Commencement Information

I5 Sch. 10 Pt. 1 para. 5 in force at 15.9.2016, see [art. 1](#)

Retained apparatus: protection

6.—(1) Not less than 28 days before starting the execution of any works of the type referred to in sub-paragraph 5(2) that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under sub-paragraph 5(2), the statutory undertaker must submit to the undertaker in question a plan of the works to be executed.

(2) Those works are to be executed only in accordance with the plan submitted under sub-paragraph (1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (3) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and the statutory undertaker is entitled to watch and inspect the execution of those works.

(3) Any requirements made by an statutory undertaker 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.

(4) If a statutory undertaker in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal of any apparatus and gives written notice to the undertaker of that requirement, paragraph 5 applies as if the removal of the apparatus had been required by the undertaker under sub-paragraph 5(2).

(5) 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.

(6) The undertaker is not required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the statutory undertaker in question 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 (2) in so far as is reasonably practicable in the circumstances.

Commencement Information

I6 Sch. 10 Pt. 1 para. 6 in force at 15.9.2016, see [art. 1](#)

Cathodic protection testing

7. Where in the reasonable opinion of the statutory undertaker—
- (a) the authorised project might interfere with the existing cathodic protection forming part of a pipeline; or
 - (b) a pipeline might interfere with the proposed or existing cathodic protection forming part of the authorised project,

the statutory undertaker to whom the pipeline belongs, or who maintains that pipeline, and the undertaker must co-operate in undertaking the tests which the statutory undertaker considers reasonably necessary for ascertaining the nature and extent of such interference and measures for providing or preserving cathodic protection.

Commencement Information

I7 Sch. 10 Pt. 1 para. 7 in force at 15.9.2016, see [art. 1](#)

Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to a statutory undertaker the reasonable expenses reasonably incurred by that statutory undertaker in, or in connection with—

- (a) the inspection, removal, alteration or protection of any apparatus; or
- (b) the construction of any new apparatus, which may be required in consequence of the execution of any such works as are required under this Part of this Schedule.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule is to be deducted from any sum payable under sub-paragraph (1), 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 46 (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 the statutory undertaker in question by virtue of sub-paragraph (1) is to 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 must not 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 must 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 a statutory undertaker in respect of works by virtue of sub-paragraph (1) must, 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 statutory 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.

Commencement Information

I8 Sch. 10 Pt. 1 para. 8 in force at 15.9.2016, see [art. 1](#)

Co-operation

9. Where in consequence of the proposed construction of any of the authorised project, the undertaker requires the removal of apparatus under sub-paragraph 5(2)) or a statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 6(2), the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised project; and each statutory undertaker must use its reasonable endeavours to co-operate with the undertaker for that purpose.

Commencement Information

I9 Sch. 10 Pt. 1 para. 9 in force at 15.9.2016, see [art. 1](#)

Arbitration

10. Any difference or dispute arising between the undertaker and a statutory undertaker under this Schedule is, unless otherwise agreed in writing between the undertaker and that statutory undertaker, to be determined by arbitration in accordance with article 46 (arbitration).

Commencement Information

I10 Sch. 10 Pt. 1 para. 10 in force at 15.9.2016, see [art. 1](#)

Changes to legislation:

There are currently no known outstanding effects for the The River Humber Gas Pipeline Replacement Order 2016, PART 1.