

SCHEDULE 10

Protective provisions

PART 10

For the protection of Wales and West Utilities

118. For the protection of Wales and West Utilities as referred to in this part of this Schedule the provisions of this Part have effect unless otherwise agreed in writing between the undertaker and Wales and West Utilities.

119. In this Part—

“alternative apparatus” means alternative apparatus adequate to enable Wales and West Utilities to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means all mains, pipes or other apparatus belonging to or maintained by Wales and West Utilities for the purposes of carrying out its statutory undertaking and includes any structure in which apparatus is or is to be lodged or which gives or will give access to apparatus;

“authorised development” has the same meaning as in article 2 (interpretation) of this Order and (unless otherwise specified) for the purposes of this Schedule shall include associated development and the construction, use, maintenance and decommissioning of the authorised development and the construction of any authorised development;

“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;

“protective works” means the underpinning, strengthening and any other works the purpose of which is to prevent damage that may be caused by the carrying out, maintenance or use of the authorised development;

“security infrastructure” includes cameras, perimeter fencing, fencing and gates and any other security measures required in order to ensure an appropriate level of security in respect of the authorised development or any apparatus;

“specified work” means so much of any of the works comprised in the authorised development or activities undertaken in association with the authorised development which:

(a) are in, on or under any land purchased, leased, held, appropriated or used under this Order that are within 15 metres of, or will or may in any way affect, any apparatus the removal of which is not required under paragraph 123 of this Part of this Schedule; and/or

(b) will or may be situated within 4 metres measured in any direction of any security infrastructure belonging to or maintained by Wales and West Utilities;

“WWU standards” means Wales and West Utilities Limited specification for safe working in the vicinity of pipelines and associated installations operating above 2 barg – requirements for third parties (SSW22) and Plant Protection General Conditions; and

“Wales and West Utilities” means Wales and West Utilities Limited (Company No. 05046791) whose registered office is at Wales & West House, Spooner Close Coedkernew, Newport, South Wales, NP10 8FZ and includes any successor in title or any successor as a gas transporter within the meaning of Part 1 of the Gas Act 1986.

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Apparatus in streets

120. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Wales and West Utilities are regulated by the provisions of Part 3 (street works in England and Wales) of the 1991 Act.

121. Regardless of the temporary prohibition or restriction of use of public rights of way or streets under the powers conferred by article 13 (temporary restriction of public right of way) and 15 (temporary restriction of use of streets), Wales and West Utilities is at liberty at all times to take all reasonably necessary access across any such public right of way or street and to execute and do all such works and things in upon or under any such public right of way or street as may be reasonably necessary to enable it to maintain any apparatus which at the time of the prohibition or restriction was in that public right of way or street.

Acquisition of land

122. Regardless of any provision of this Order or anything shown on the land plans or contained in the book of reference to the Order, the undertaker must not (a) appropriate or acquire or take temporary possession of apparatus or (b) appropriate, acquire or extinguish interfere with or override any easement, other interest or right and/or apparatus any apparatus belonging to or maintained by Wales and West Utilities otherwise than by agreement, provided that such agreement is not unreasonably delayed or withheld.

Removal of apparatus

123.—(1) If, in the exercise of the powers conferred by this Order, including pursuant to any agreement reached in accordance with paragraph 118, the undertaker acquires any interest in, on or under any land in which any apparatus is placed or over which access is enjoyed and requires Wales and West Utilities' apparatus is relocated or diverted, that apparatus must not be decommissioned or removed under this Part, and any right of Wales and West Utilities to maintain that apparatus in that land and to gain access to it must not be extinguished or interfered with until alternative apparatus has been constructed and is in operation and the facilities and rights referred to in sub-paragraph (2) to the reasonable satisfaction of Wales and West Utilities.

(2) If, for the purpose of executing any works in, on or under any land purchased, leased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, the undertaker must give to Wales and West Utilities at least 28 days' written notice of that requirement, together with a plan, description, risk assessment method statement and section drawing of the work proposed which complies with WWU standards, 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 Wales and West Utilities reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to Wales and West Utilities the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and subsequently for the maintenance of and access to that apparatus and any appropriate working areas.

(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of the undertaker, or the undertaker 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, Wales and West Utilities must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use reasonable 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 undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between Wales and

West Utilities and the undertaker or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(5) Wales and West Utilities must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 47 (arbitration), and after the grant to Wales and West Utilities 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 or decommission any apparatus required by the undertaker to be removed or decommissioned under the provisions of this Part.

Facilities and rights for alternative apparatus

124.—(1) Where, in accordance with the provisions of this Part, the undertaker affords to Wales and West Utilities facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed or decommissioned, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and Wales and West Utilities or in default of agreement settled by arbitration in accordance with article 47 (arbitration).

(2) In settling those terms and conditions in respect of alternative apparatus to be constructed in or along the authorised development, the arbitrator must—

- (a) give effect to all reasonable requirements of the undertaker for ensuring the safety and efficient operation of the authorised development and for securing any subsequent alterations or adaptations of the alternative apparatus that may be required to prevent interference with any proposed works of the undertaker;
- (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 or along the authorised project for which the alternative apparatus is to be substituted; and
- (c) avoid any unreasonable adverse impact on Wales and West Utilities' operations or apparatus.

(3) If the facilities and rights to be afforded by the undertaker 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 less favourable on the whole to Wales and West Utilities 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 must make such provision for the payment of compensation by the undertaker to Wales and West Utilities as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

125.—(1) Not less than 42 days before starting the execution of any specified works in, on or under any land purchased, leased, held, appropriated or used under this Order that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 123(2), the undertaker must submit to Wales and West Utilities a plan, section drawing, description of the works to be executed and a risk assessment method statement which comply with WWU standards.

(2) Those works must be executed only in accordance with the plan, section drawing, description and risk assessment method statement submitted under sub-paragraph (1) and in accordance with WWU standards and such reasonable requirements as may be made in accordance with sub-paragraph (3) by Wales and West Utilities for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and Wales and West Utilities is entitled to watch and inspect the execution of those works.

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(3) Any requirements made by Wales and West Utilities under sub-paragraph (2) must be made within a period of 42 days beginning with the date on which a plan, section drawing, description, and risk assessment method statement under sub-paragraph (1) is submitted to it.

(4) If Wales and West Utilities, in accordance with sub-paragraph (3) and in consequence of the works proposed by the undertaker, reasonably requires the removal or decommissioning of any apparatus or any reasonably necessary protective works and gives written notice to the undertaker of that requirement, the provisions of this Part apply as if the removal or decommissioning of the apparatus or the protective works had been required by the undertaker under paragraph 123(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 42 days before commencing the execution of any works, a new plan instead of the plan, section drawing, description and risk assessment method statement previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section drawing, description and risk assessment method statement.

(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 Wales and West Utilities notice as soon as is reasonably practicable and a plan, section drawing, description and risk assessment method statement 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.

(7) Where the specified works only include ground investigation or PAS128 Cat A surveys, all timeframes in this paragraph shall be reduced to 14 days.

Expenses and costs

126.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to Wales and West Utilities within 30 days of a request by Wales and West Utilities the reasonable expenses agreed with the undertaker in advance and reasonably incurred by Wales and West Utilities in the inspection, removal, relaying or replacing, alteration or protection of any apparatus or security infrastructure of the construction of any new apparatus or security infrastructure which may be required in direct consequence of the execution of any such works as are referred to in paragraph 123(2) or any specified work, but always provided that the undertaker shall not be liable under any circumstances for any consequential loss or indirect loss suffered by Wales and West Utilities.

(2) The value of any apparatus removed under the provisions of this Part must 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—

(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 47 (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 utility undertaker in question by virtue of sub-paragraph (1) must be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (3)—

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- (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 Wales and West Utilities 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 Wales and West Utilities any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, is to be reduced by the amount which represents that benefit.

127.—(1) Subject to sub-paragraph (2), if by reason or in consequence of the construction of any such works referred to in paragraph 6(2) or any specified work 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 Wales and West Utilities, or there is any interruption in any service provided, or in the supply of any goods, by Wales and West Utilities, the undertaker must—

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

as a direct result of any such damage or interruption and always provided that the undertaker shall not be liable under any circumstances for any consequential loss or indirect loss suffered by Wales and West Utilities.

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

(3) Wales and West Utilities 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 unless payment is required and the level specified in accordance with a statutory compensation scheme and, if such consent is withheld, the undertaker has the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand provided that the undertaker consults Wales and West Utilities and takes any representations it makes into account.

Enactments and agreements

128. Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and Wales and West Utilities in respect of any apparatus in land belonging to the undertaker on the date on which this Order is made.