

PROTECTIVE PROVISIONS

PART 1

PROTECTION FOR ELECTRICITY, GAS, WATER AND SEWERAGE UNDERTAKERS

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

2. In this Part of this Schedule

— “alternative apparatus” means any temporary or permanent 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 undertaker, electric lines or electrical plant (as defined in the Electricity Act 1989(a)), belonging to or maintained by that electricity undertaker for the purposes of electricity supply; (b) in the case of a gas undertaker, any mains, pipes or other apparatus belonging to or maintained by that gas undertaker for the purposes of gas supply; (c) in the case of a water undertaker, mains, pipes or other water apparatus belonging to or maintained by that water undertaker for the purposes of water supply; and (d) in the case of a sewerage undertaker— (i) any drain or works vested in the undertaker under the Water Industry Act 1991(b); 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 in each case 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;

“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;

"reservoir" means any reservoir constructed by or on behalf of SEW in the vicinity of Broad Oak, Canterbury, Kent

"SEW" means South East Water including all associated and any equivalent successor companies

“statutory 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

(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 statutory undertaker to whom it belongs or by whom it is maintained.

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.

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.

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, diverted or otherwise altered under this Part of this Schedule and/or any right of a statutory undertaker to maintain apparatus in that land must not be extinguished or made incapable of being exercised or more difficult to exercise unless:

(a) it is necessary for the purpose of carrying out the authorised development; and

(b) any alternative apparatus required by the statutory undertaker (acting reasonably) has been constructed and is in operation to the reasonable satisfaction of the statutory undertaker; and

(c) any rights required by the statutory undertaker (acting reasonably) including to install, access, retain, replace, divert and maintain any alternative apparatus have been granted to the reasonable satisfaction of the statutory undertaker in question; and

(d) any rights required by the statutory undertaker (acting reasonably) including to install, access, retain, replace, divert and maintain any diverted or altered apparatus have been granted 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:

(a) requires the removal, diversion or alteration of any apparatus placed in that land; and/or

(b) is carrying out works on that land which would cause any right of a statutory undertaker to maintain apparatus in that land to be extinguished or made incapable of being exercised or more difficult to exercise;

the undertaker must give written notice to the statutory undertaker and provide details of the works to be carried out, in accordance with paragraph 6.(1) below.

(3) If alternative apparatus is to be constructed as a consequence of the removal, diversion or other alteration of apparatus placed, or any part of such apparatus, on the land referred to in sub-paragraph 5.(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 reasonable endeavours to obtain the necessary facilities and rights in the 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 51, and after the grant to the statutory undertaker of any such facilities and rights as are referred to in subparagraph 5.(3), proceed without unnecessary delay to construct and bring into operation the alternative apparatus and subsequently to remove, alter or divert any apparatus required by the undertaker to be removed, diverted or altered subject to the appropriate conditions in paragraph 5 (1)(a)-(d) of this Part of this Schedule being met and the statutory undertaker having secured any rights necessary to carry out such a removal, diversion or other alteration.

(5) Regardless of anything in sub-paragraph 5.(4) but subject to the conditions in subparagraphs 5(1)(a)-(d), 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, removal, diversion or alteration of apparatus or the installation of alternative 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 and for the avoidance of doubt such work will be carried out at no cost to the statutory undertaker. The undertaker will carry out such work in such manner as to cause as little damage and disruption as possible to the statutory undertaker. If so requested by the statutory undertaker, the undertaker will return any removed apparatus to the statutory undertaker.

(6) Nothing in sub-paragraph 5.(5) authorises the undertaker 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 apparatus which is not being removed, diverted or altered.

6.(1) Not less than 28 days before starting the execution of any works of the type referred to in paragraph 5(2) and or any works that are near to or will or may affect any apparatus the removal, diversion or alteration of which has not been required by the undertaker under paragraph 5 (2) the undertaker must submit to the statutory undertaker in question for approval (such approval not to be unreasonably withheld) a plan, section and description of the works to be executed including (where appropriate) the proposed details of and location of alternative apparatus.

(2) The works must be executed only in accordance with the plan, section and description submitted and approved under sub-paragraph 6(1) and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph 6(3) by the statutory undertaker for the alteration or otherwise of the works necessary for the protection of apparatus and/or any apparatus which is near to or will be or may be affected by the works but which is not being removed, diverted or altered itself, or for securing access to such apparatus and the statutory undertaker is entitled to watch and inspect the execution of any works it is not carrying out itself.

(3) Any requirements made by a statutory undertaker under sub-paragraph 6(2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph 6(1) are submitted to it or within a period of 28 days beginning with the date on which the statutory undertaker becomes aware of any issues which means the apparatus and or access to such apparatus needs to be protected /secured, whichever is the later.

(4) If a statutory undertaker in accordance with sub-paragraph 6(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, paragraphs 1 to 4 apply as if the removal of the apparatus had been required by the undertaker under 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, section and description for approval of the statutory undertaker (such approval not to be unreasonably withheld) instead of the plan, section and description previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan, section and description.

(6) The undertaker is not required to comply with sub-paragraph 6(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, section and description of those works as soon as reasonably practicable subsequently and must comply with sub-paragraph 6(2) in so far as is reasonably practicable in the circumstances.

7.(1) Subject to the following provisions of this paragraph, the undertaker must repay to the statutory undertaker in question the proper and reasonable expenses incurred by that statutory undertaker in, or in connection with, the approval of plans, inspection, installation, removal, diversion, alteration or protection of any apparatus or alternative apparatus and the reasonable costs of securing any rights

which the statutory undertaker requires (acting reasonably) in relation to the apparatus or alternative apparatus including to install, access, retain, replace, divert, alter and maintain that apparatus or alternative apparatus.

(2) The value of any apparatus removed by the statutory undertaker or returned to the statutory undertaker after removal by the undertaker is to be deducted from any sum payable under sub-paragraph (1), that value being calculated by the statutory undertaker (who will provide reasonable evidence of such value if so requested) after removal.

(3) If in accordance with the provisions of this Part of this Schedule:

(a) alternative apparatus of a significantly, better type, greater capacity or greater dimensions is placed in substitution for existing apparatus of worse type, of smaller capacity or of smaller dimensions; or

(b) existing or alternative apparatus is placed at a significantly greater depth than the depth at which the existing apparatus was,

and the placing of alternative apparatus of that type or capacity or of those dimensions or the placing of apparatus or alternative 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 51 (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 alternative apparatus placed had been of the existing type, capacity or dimensions, or the existing or alternative apparatus placed 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 the value of that excess being calculated by the statutory undertaker (who will provide reasonable evidence of such value if so requested).

(4) For the purposes of sub-paragraph 7(3)

(a) an extension of apparatus to a length greater than the length of existing apparatus is not to 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 cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole is to 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 7(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 in question 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, the value of which being calculated by the statutory undertaker (who will provide reasonable evidence of such value if so requested).

8. If any damage to any apparatus or any property containing apparatus is caused by, or results from, any work authorised by this Order or any act or omission of the undertaker, its contractors, agents or employees whilst engaged upon such work, the undertaker must make good such damage to the reasonable satisfaction of the relevant statutory undertaker and or make a payment of compensation to the relevant statutory undertaker including in such a compensation payment the cost of any fines or compensation the statutory undertaker incurs due to any inability to carry out its statutory functions.

9. The undertaker must pay to the relevant statutory undertaker all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule (subject to article 50 (*no double recovery*)) which may be occasioned to or reasonably incurred by the relevant statutory undertaker

(a) by reason of the construction or maintenance of any works authorised by this Order or the failure thereof ; or

(b) by reason of any act or omission of the undertaker or of any person in its employ or of its contractors or others whilst engaged in carrying out any works authorised by this Order;

(c) the undertaker must indemnify and keep indemnified the relevant statutory undertaker and against all claims and demands arising out of or in connection with any works authorised by this Order or any such failure, act or omission

Nothing in this Part of this Schedule imposes any liability on the undertaker with respect to any damage, costs, expenses or loss attributable to the negligence of the relevant statutory undertaker or its servants, contractors or agents or any liability on the relevant statutory undertaker with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

10. The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any apparatus or alternative apparatus, unless preventing such access is with the consent of the relevant statutory undertaker

11. If at any time after the completion of any works authorised by this Order , the relevant statutory undertaker gives notice to the undertaker informing it that the state of maintenance of any part of the works authorised by this Order appears to be such that it is adversely affecting the statutory undertaking carrying out its statutory functions as efficiently as before the authorised development was approved and this Order granted, the undertaker must, on receipt of such notice, take such steps as may be reasonably necessary to put that specified work in such state of maintenance as not adversely to affect the statutory undertaker in the performance of its statutory functions, if it fails to do it will be liable under paragraph 8 of this Part of the Schedule.