

## SCHEDULES

### SCHEDULE 12

#### PROTECTIVE PROVISIONS

#### PART 7

#### FOR THE PROTECTION OF SOUTH STAFFORDSHIRE WATER PLC

##### **Application**

75. For the protection of SSW the following provisions have effect unless otherwise agreed in writing between Network Rail and SSW.

76. The provisions of paragraph 1 of Schedule 11 (provisions relating to statutory undertakers etc. on land acquired), in so far as they relate to the removal of apparatus, do not apply in relation to apparatus to which this Part of this Schedule applies.

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

##### **Interpretation**

78. In this Part of this Schedule—

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

“apparatus” means—

- (a) mains, pipes or other apparatus belonging to or maintained by SSW for the purposes of water supply;
- (b) any drain or works vested in SSW under the Water Industry Act 1991; and
- (c) any sewer which is so vested in SSW or is the subject of a notice of intention to adopt by SSW given under section 102(4) of that Act or an agreement to adopt by SSW 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 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;

“plans” includes sections, drawings, specifications and method statements; and

“SSW” means South Staffordshire Water Plc and includes its successors in title or any successor as a water undertaker within the meaning of the Water Industry Act 1991.

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### **Acquisition of apparatus**

**79.** Regardless of any provision in this Order or anything shown on the deposited plans, Network Rail must not acquire any apparatus otherwise than by agreement.

### **Alternative apparatus**

**80.**—(1) If, in the exercise of the powers conferred by this Order, Network Rail 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 SSW 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 SSW.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, Network Rail requires the removal of any apparatus placed in that land, it must give to SSW written notice of that requirement, together with a plan and section of the work proposed, and of the proposed position of the alternative apparatus to be provided or constructed

(3) The proposed position of the alternative apparatus to be provided or constructed is subject to approval by SSW (such approval not to be unreasonably withheld or delayed). In the event that SSW (acting reasonably) considers the proposed position of the alternative apparatus to be unsuitable, SSW shall (acting reasonably) propose an alternative position for the alternative apparatus and must give Network Rail written notice of such alternative position for the alternative apparatus within 28 days of the service of a notice under sub-paragraph (2). Any dispute regarding the alternative apparatus (including but not limited to the proposed position and/or the alternative proposed position) which cannot be agreed between the parties is to be determined in accordance with article 44 (arbitration).

(4) Any alternative apparatus to be constructed in land of Network Rail under this Part of this Schedule is to be constructed in such manner and in such line or situation as may be agreed between SSW and Network Rail such agreement to be within 28 days of the service of a notice under sub-paragraph (2) (or within 28 days of service of a notice under sub-paragraph (3) where SSW has proposed an alternative position for the alternative apparatus under sub-paragraph (3) which is acceptable to Network Rail), or in default of such agreement settled by arbitration in accordance with article 44 (arbitration).

(5) In any case where alternative apparatus is to be provided or constructed under sub-paragraphs (2) or (3), or if in consequence of the exercise of any of the powers conferred by this Order SSW reasonably needs to remove any of its apparatus, Network Rail must, subject to sub-paragraph (6), afford to SSW the necessary facilities and rights for the construction of alternative apparatus in other land of Network Rail and subsequently for the maintenance of that apparatus and SSW shall be entitled to recover its reasonable costs incurred in securing such necessary facilities and rights from Network Rail subject to paragraph 83(3) below.

(6) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of Network Rail, or Network Rail is unable to afford such facilities and rights as are mentioned in sub-paragraph (5), in the land in which the alternative apparatus or part of such apparatus is to be constructed, SSW must, on receipt of a written notice to that effect from Network Rail, as soon as reasonably possible use reasonable endeavours (having regard to its statutory powers) to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed.

(7) SSW must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 44, and after the grant to SSW of any such facilities and rights as are referred to in sub-paragraph (6) or (6), proceed without unreasonable delay (having

regard to the operational requirements of SSW) to construct and bring into operation the alternative apparatus.

(8) Regardless of anything in sub-paragraph (7), if Network Rail gives notice in writing to SSW 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 Network Rail, that work, instead of being executed by SSW, must be executed by Network Rail without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of SSW.

(9) Nothing in sub-paragraph (8) authorises Network Rail 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 3 metres of the apparatus without the written consent of SSW (such consent not to be unreasonably withheld or denied).

(10) In relation to any works which will or may be situated on, over or within 3 metres measured in any direction of any apparatus, the plan to be submitted to SSW under sub-paragraph (1) must be detailed, include a method statement and describe—

- (a) the exact position of the works;
- (b) the level at which they are proposed to be constructed or renewed;
- (c) the manner of their construction or renewal including details of excavation and positioning of plant;
- (d) the position of all apparatus including existing apparatus and apparatus to be retained;
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus; and
- (f) any maintenance required.

**81.—**(1) Where, in accordance with the provisions of this Part of this Schedule, Network Rail affords to SSW facilities and rights for the construction and maintenance in land of Network Rail of alternative apparatus in substitution for apparatus to be removed, those facilities and rights are to be granted upon such terms and conditions as may be agreed between Network Rail and SSW or in default of agreement settled by arbitration in accordance with article 44 (arbitration).

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

- (a) give effect to all reasonable requirements of Network Rail for ensuring the safety and efficient operation of the railway and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with any proposed works of Network Rail or the traffic on the railway; 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 or along the railway for which the alternative apparatus is to be substituted.

(3) In settling those terms and conditions in respect of alternative apparatus to be constructed within 3 metres of any existing apparatus of SSW, the arbitrator must—

- (a) give effect to all reasonable requirements of SSW for ensuring the protection of the existing apparatus and for securing any subsequent alterations or adaptations of the alternative apparatus which may be required to prevent interference with the existing apparatus; 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 existing apparatus for which the alternative apparatus is to be substituted.

(4) If the facilities and rights to be afforded by Network Rail 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 SSW than the facilities and rights

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enjoyed by SSW 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 Network Rail to SSW as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

### **Existing apparatus: protection and access**

**82.**—(1) Not less than 42 days before starting the execution of any of the authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by Network Rail under paragraph 80(2), Network Rail must submit to SSW a plan, section and description of the works to be executed.

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

(3) Any requirements made by SSW under sub-paragraph (2) must be made within a period of 28 days beginning with the date on which a plan, section and description under sub-paragraph (1) are submitted to it.

(4) If SSW in accordance with sub-paragraph (3) and in consequence of the works proposed by Network Rail, reasonably requires the removal of any apparatus and gives written notice to Network Rail of that requirement, paragraphs 75 to 81 apply as if the removal of the apparatus had been required by Network Rail under paragraph 80(2).

(5) Nothing in this paragraph precludes Network Rail 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, section and description 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) Network Rail is not required to comply with sub-paragraph 82(1) in a case of emergency but in that case it must give to SSW 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 (2) in so far as is reasonably practicable in the circumstances.

### **Expenses**

**83.**—(1) Subject to the following provisions of this paragraph, Network Rail must repay to SSW the reasonable expenses incurred by SSW in, or in connection with, the inspection, removal, alteration or protection of any apparatus or the construction of any new apparatus (including costs or compensation payable in connection with the acquisition of land for that purpose) which may be required in consequence of the execution of any of the authorised works.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule (other than apparatus that is re-used by SSW acting reasonably as alternative apparatus) 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 except where this has been solely due to using the nearest currently available type; 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,

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 Network Rail or, in default of agreement, is not determined by arbitration in accordance with article 44 (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 type, capacity, dimensions, or at the existing depth required to maintain the existing operational requirement, as the case may be, the amount which apart from this paragraph would be payable to SSW by virtue of sub-paragraph (1) is to be reduced by the amount of that excess (save to the extent that it is not possible in the circumstances (or it would be unlawful due to a statutory or regulatory change) to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth).

(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 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 SSW in respect of works under 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 SSW 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.

(6) Any dispute as to whether a financial benefit is conferred in accordance with sub-paragraph (5) or as to the amount of such financial benefit which cannot be agreed is to be determined in accordance with article 44 (arbitration).

#### **Damage to apparatus: costs, losses, etc.**

**84.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any of the authorised works 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 SSW or there is any interruption in any service provided or in the supply of any goods, by SSW Network Rail must—

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

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

(3) SSW must give Network Rail reasonable notice of any such claim or demand and no settlement or compromise is to be made without the consent of Network Rail (such consent not to be unreasonably withheld or delayed) and in the event of any dispute to be settled by arbitration in accordance with article 44 (arbitration).

#### **Enactments and agreements**

**85.** Nothing in this Part of this Schedule affects the provisions of any enactment or agreement regulating the relations between Network Rail and SSW in respect of any apparatus laid or erected in land belonging to Network Rail on the date on which this Order is made.