

SCHEDULES

SCHEDULE 4

Article 29

PROTECTION OF FUEL PIPELINES AND FACILITIES

PART I

Interpretation, etc.

1.—(1) For the protection of certain fuel pipelines and facilities the following provisions shall apply and have effect, unless otherwise agreed in writing between the undertaker and the participants or, as the case may be, the oil company concerned.

(2) In this Schedule, unless the subject or context otherwise requires—

“the BP/Shell lease” means the lease of certain Depots and Pipelines dated 10 August 1984 and made between the British Airports Authority, of the one part, and BP Oil Limited and Shell U.K. Limited, of the other part;

“the BP/Shell pipelines” means the whole or any part of the Pipelines, as defined in the BP/Shell lease;

“Code of Practice” means the Code of Construction Practice as for the time being in force that is intended to regulate any environmental nuisance which may be caused in the course of carrying out the works;

“construction” includes execution, placing and altering and cognate expressions shall be construed accordingly;

“the Esso lease” means the lease of a Depot and certain Pipelines dated 10 August 1984 and made between the British Airports Authority of the one part and Esso Petroleum Company Limited of the other part;

“the Esso pipelines” means the whole or any part of the Pipelines, as defined in the Esso lease;

“the hydrant systems” means the whole or any part of the Pipelines, as defined in the hydrant systems lease;

“the hydrant systems lease” means the lease of the hydrant systems dated 10 August 1984 and made between the British Airports Authority, of the one part, and Esso Petroleum Company Limited, Mobil Oil Company Limited, Shell U.K. Limited, BP Oil Limited, Texaco Limited, Total Oil Great Britain Limited, Elf Oil (GB) Limited, Chevron International Oil Company Limited and Petrofina (UK) Limited, of the other part, as amended by deeds dated 28 August 1987 and 28 September 1990 and by subsequent agreement;

“the Nominee” means Heathrow Hydrant Operating Company Limited, which has been nominated by the participants to act on their behalf for the purposes of Part II of this Schedule, or such other person as is nominated for the purposes of that Part or any provisions thereof by a written notice signed by all the participants and served on the undertaker;

“oil company” means BP Oil UK Limited, Shell U.K. Limited, Esso Petroleum Company Limited, Kuwait Petroleum International Aviation Company (U.K.) Limited or Heathrow Airport Fuel Company Limited;

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“the participants” means the persons who have for the time being any right or interest in the hydrant systems or who (being a company concerned in the supply of fuel at the airport or in the provision of airline services thereat) have any interest in a company which has for the time being the entire leasehold interest in the hydrant systems;

“plans” includes sections, drawings, calculations, methods of construction, particulars and specifications;

“the protected property” means any fuel depot, tank farm, offices, access roads, parking areas or other facilities (together with any pipelines, apparatus or equipment located therein)—

- (a) any part of which is situated within the limits of deviation of the works or within 50 metres thereof; and
- (b) in respect of which an oil company has an interest for the time being;

“protective works” has the meaning given by paragraph 6(1) below;

“specified matter” means any of the following—

- (a) the construction, maintenance, operation or use of the works;
- (b) the construction, maintenance, operation or use of any protective works or safeguarding works;
- (c) any preparatory action in connection with any activity mentioned in paragraph (a) or (b) above;
- (d) any subsidence resulting from, or failure or want of repair of any such works as are mentioned in paragraph (a) or (b) above; and
- (e) any act or omission of the undertaker or of any person in its employ or of its agents or contractors whilst engaged upon the construction, maintenance, operation or use of any such works as are mentioned in paragraph (a) or (b) above or any preparatory action mentioned in paragraph (c) above;

“the Surveyor” means the surveyor or engineer appointed for the purposes of Part IV of this Schedule;

“the works” means the whole or any part of the works authorised by this Order including the making of any trial hole under article 8 of this Order.

(3) In this Schedule references to the relevant oil company are references to any (or, as the case may be, each) oil company which has an interest in the protected property concerned for the time being.

(4) In this Schedule references to an oil company include references to its successors in title (being a company concerned in the supply of fuel at the airport) in respect of any pipelines or protected property; and references to an oil company having an interest in any property include references to an oil company having an interest in a company which itself has an interest in any property.

PART II

Protection of hydrant fuelling systems

2.—(1) Notwithstanding anything in this Order, as shown on the deposited plans, the undertaker shall not pursuant to the powers of this Order acquire the hydrant systems otherwise than by agreement with the participants.

(2) The undertaker shall not exercise the powers in article 4(3)(a) in relation to the hydrant systems except in accordance with the provisions of the hydrant systems lease.

(3) The undertaker shall not exercise the powers in article 6 and article 7 in relation to the hydrant systems.

(4) The undertaker shall not exercise the powers in article 14 and article 15 to take possession of the hydrant systems, otherwise than by agreement with the participants.

3. The undertaker shall use its best endeavours—

- (a) in exercising any of the powers of this Order to avoid or (failing avoidance) to minimise any damage or disruption to the hydrant systems or their operation; and
- (b) without prejudice to paragraph (a) above, to ensure that the works do not at any time fall into such a condition as to compromise the integrity or operation of the hydrant systems.

4.—(1) Except in the case of trial holes or alterations, not less than five months before commencing to construct the works, the undertaker shall furnish to the Nominee a programme for the works proposed and a general indication of the nature and location of those works and, if within 28 days from the receipt by the Nominee of that programme and general indication the Nominee gives notice in writing to the undertaker that any part of the works indicated in the programme may in any way affect the hydrant systems, paragraphs 5 and 6 below shall apply with respect to that part of those works.

(2) Upon giving any notice to the undertaker under sub-paragraph (1) above the Nominee shall furnish drawings showing to the best of its knowledge the position and depth of the relevant part of the hydrant systems.

5. Not less than three months before commencing to construct the works or not less than one month before digging trial holes or making alterations to the works in either case may significantly affect the hydrant systems, the undertaker shall furnish to the Nominee plans thereof (together with a programme of the works in the case of trial holes or alterations) and shall have due regard to any representations made by the Nominee relating to such plans or to the programme for the works.

6.—(1) At any time within a period of one month, or a period of 14 days in the case of trial holes or alterations, from the receipt by the Nominee of the plans referred to in paragraph 5 above the Nominee may by notice in writing to the undertaker specify any reasonable temporary or permanent works or measures (the “protective works”) which in its reasonable opinion should be carried out or taken by the undertaker before the commencement of or during the construction of the works in order to ensure the stability of the hydrant systems (shown where applicable on the drawings furnished by the Nominee under paragraph 4(2) above) or to protect them from injury (including injury by subsidence) and such protective works shall be constructed by the undertaker at its own expense and under the inspection (if any) of the Nominee.

(2) Except in the case of protective works that the Nominee has informed the undertaker in writing may be carried out during the construction of the works, the undertaker shall not commence the construction of any work within fifteen metres of, or which may in any way affect, the hydrant systems until the protective works relating to that work have been completed to the reasonable satisfaction of the Nominee.

(3) In the case of protective works of which the Nominee has informed the undertaker in writing as mentioned in sub-paragraph (2) above, the undertaker shall comply with all reasonable requirements of the Nominee arising from its inspection under sub-paragraph (1) above as promptly as practicable after the undertaker has been notified of such requirements.

(4) Except in an emergency (when it shall give such notice as may be reasonably practicable) the undertaker shall give the Nominee not less than 14 days' notice of its intention to carry out any works for the repair or maintenance of the protective works in so far as such works may affect or interfere with the hydrant systems.

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7.—(1) The undertaker shall from time to time supply the Nominee with all such information as the Nominee may reasonably require in relation to operations relating to or connected with the works which may interfere with any measures to which this sub-paragraph applies.

(2) Sub-paragraph (1) above applies to measures for providing or preserving cathodic protection for apparatus forming part of the hydrant systems which have been taken by any of the participants or upon which the Nominee has consulted the undertaker.

8.—(1) The undertaker shall repay to the Nominee and any participant the reasonable expenses incurred by the Nominee or that participant in or in connection with the preparation of any drawing or notice referred to in paragraph 4(2) or 6(1) above and the watching and inspecting of—

- (a) any protective works relating to the hydrant systems; and
- (b) any of the works (including maintenance works) which are near to or are likely to affect the hydrant systems.

9.—(1) If by reason or in consequence of any specified matter any damage, disruption or interference to the hydrant systems or the operation or use thereof shall be caused or the Nominee or any participant shall carry out any works, take any measures or install any ancillary apparatus (other than additional cathodic protection) which may be reasonably necessary to prevent any such damage, disruption or interference occurring—

- (a) the undertaker shall pay reasonable compensation to each participant or the Nominee for any loss sustained or additional expense incurred by that person; and
- (b) the undertaker shall indemnify the Nominee and each participant against all claims, demands, proceedings, costs, damages and expenses which may be made, taken against or recovered from or incurred by the Nominee or that participant by reason or in consequence of any specified matter.

(2) Nothing in this paragraph shall impose any liability on the undertaker in respect of so much of any damage, loss or additional expenditure as is attributable to—

- (a) the act, neglect or default of the Nominee or any employees or any participant, or contractors of the Nominee or any participant such act, neglect or default to include, without prejudice to the generality of that expression, any failure to show upon the drawings furnished under paragraph 4(2) above to the best of the Nominee's knowledge the position and depth of the relevant part of the hydrant systems with sufficient accuracy to have enabled the undertaker by taking reasonable precautions to avoid damage or loss or the need for additional expenditure in respect of those systems; or
- (b) any work or operation carried out by or on behalf of the undertaker in accordance with the instructions of the Nominee and without negligence.

(3) The Nominee or, as the case may be, the relevant participant shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent in writing of the undertaker, such consent not to be unreasonably withheld or delayed.

10. The preceding provisions of this Part of this Schedule shall apply in relation to any pipelines and associated equipment lawfully installed by or for the use of the participants after the coming into force of this Order (whether or not in accordance with the hydrant systems lease) as they apply in relation to the hydrant systems.

PART III

Protection of certain pipelines

11.—(1) The provisions of Part II of this Schedule shall apply to the BP/Shell pipelines as they apply to the hydrant systems as if—

- (a) references in paragraphs 4 to 7 to the Nominee were references to BP Oil UK Limited;
- (b) other references to the Nominee and references to the participants (or any of them) were references to BP Oil UK Limited and Shell U.K. Limited or either of them, as the case may be; and
- (c) the reference in paragraph 10 to the hydrant systems lease were a reference to the BP/Shell lease.

(2) The provisions of Part II of this Schedule shall apply to the Esso pipelines as they apply to the hydrant systems as if—

- (a) references to the Nominee and the participants (or any of them) were references to the Esso Petroleum Company Limited; and
- (b) the reference in paragraph 10 to the hydrant systems lease were a reference to the Esso lease.

PART IV

Protection of certain depots

12.—(1) Before commencing construction of so much of the works as will or may affect the protected property the undertaker shall, at its own expense, appoint in the joint names of the undertaker and the relevant oil company a reputable firm of chartered building surveyors or chartered engineers to prepare a schedule of defects existing in the protected property and that firm shall submit a copy of the schedule to the undertaker and the relevant oil company.

(2) After construction of the works and at the written request of the relevant oil company a similar schedule to that prepared in accordance with paragraph 12(1) above shall be prepared by and at the expense of the undertaker in consultation with the Surveyor, but no such request may be made later than at the end of two years from the date of opening for public traffic of the railway comprised in the works and the undertaker shall not be required to prepare more than one such schedule for the protected property.

13.—(1) The undertaker shall undertake monitoring of any protected property in respect of which a schedule of defects is required to be prepared under paragraph 12(1) above, and that monitoring shall consist of precise levelling of various points on the outside of the protected property and, if necessary, monitoring crack propagation.

(2) Monitoring under sub-paragraph (1) above shall take place prior to the construction of the works and during the period that any settlement of the protected property is occurring and for a three month period after the monitoring indicates that the settlement has ceased and as soon as practicable after the monitoring results have been obtained the undertaker shall provide a copy of such results to the relevant oil company without charge.

14.—(1) The undertaker shall in the construction, maintenance, use and operation of the works employ all means which are reasonably practicable—

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- (a) to minimise any settlement or damage which may be likely to be caused to the protected property including carrying out all necessary safeguarding works under article 7 in consultation with the relevant company and the Surveyor;
- (b) to ensure that the works are carried out in accordance with the Code of Practice.

(2) The undertaker shall employ all means which are reasonably practicable for the purpose of minimising any interference with power, drainage, telecommunications and other essential services as a result of the construction and maintenance of the works and the undertaker shall give immediate consideration to any complaint which may be made by the relevant oil company of such interference and use all reasonable endeavours to remedy it as soon as possible.

(3) Without prejudice to the preceding provisions of this paragraph, in exercising its powers under article 7 of this Order in relation to the protected property the undertaker shall use all means that are reasonably practicable to prevent or failing prevention to minimise any disruption to any business of the oil company concerned which is being carried on at or from that property.

15. The undertaker shall within 30 days of notice in writing to do so repay to the relevant oil company all reasonable costs, charges and expenses properly incurred by the relevant oil company (including Value Added Tax thereon in so far as the same is not recoverable by the relevant oil company) in connection with—

- (a) the services of the Surveyor under paragraph 12(2) above;
- (b) the services of architects, surveyors, engineers and other technical advisers to whom the Surveyor finds it reasonably necessary to refer in connection with this Part of this Schedule.

16.—(1) The undertaker shall not exercise the powers under article 15 of this Order in the case of the surface of the protected property.

(2) The undertaker shall in the course of the construction or maintenance of the works use all means which are reasonably practicable to avoid material interference with any access to the protected property.

17.—(1) If by reason or in consequence of any specified matter any damage, disruption or interference shall be caused to (or to the operation or use of) the protected property or if an oil company shall carry out any works, take any measures or install any ancillary apparatus which may be reasonably necessary to prevent any such damage, disruption or interference occurring—

- (a) the undertaker shall make reasonable compensation to the oil company concerned for any loss sustained or additional expense incurred by it; and
- (b) the undertaker shall indemnify the oil company concerned against all claims, demands, proceedings, costs, damages and expenses which may be made, taken against or recovered from or incurred by that oil company by reason or in consequence of any specified matter.

(2) Nothing in this paragraph shall impose any liability on the undertaker in respect of so much of any damage, loss or additional expenditure as is attributable to the act, neglect or default of the oil company concerned or any employees or contractors of the oil company.

(3) The oil company concerned shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without the prior consent in writing of the undertaker, such consent not to be unreasonably withheld or delayed.

PART V

Miscellaneous

18. Nothing in this Schedule shall prejudice or affect the right of any person to claim compensation in accordance with the other provisions of this Order but no person shall be entitled to any compensation by virtue of those provisions as regards so much of any damage or claim in respect of which that person is entitled to payment under this Schedule.

19. Subject to paragraph 9(2)(a) above, the fact that any work or thing has been executed or done under or for the purposes of this Order in accordance with a plan submitted to any person or in accordance with any requirement of any person or directions or award of any arbitrator under article 34 of this Order shall not relieve the undertaker from any liability for damage caused to any property or affect any claim by any person in respect of such damage.