

## SCHEDULE 12

### Protective provisions

## PART 2

### For the protection of National Grid Electricity Transmission plc

#### Application

1. For the protection of the persons referred to in this part of this Schedule the following provisions shall, unless otherwise agreed in writing between the undertaker and the protected person concerned, have effect.

#### Commencement Information

II Sch. 12 Pt. 2 para. 1 in force at 6.8.2014, see [art. 1](#)

#### Interpretation

2. In this Part of this Schedule—

“acceptable credit provider” means a bank or financial institution with a credit rating that is not lower than “A-” if the rating is assigned by Standard & Poor’s Ratings Group or “A3” if the rating is assigned by Moody’s Investors Services Inc. (or an equivalent credit rating from an equivalent organisation in the event that such organisation or ratings are no longer applicable);

“acceptable insurance” means a policy of public liability/ third party liability insurance effected and maintained by the undertaker with insurance cover of not less than £50,000,000 (fifty million pounds) per event for the construction period of the onshore works pursuant to this Order with an internationally recognised insurer of repute operating in the London and worldwide insurance market, and such policy shall include (but without limitation)—

- (a) the protected person named as an insured party under the policy;
- (b) a cross liabilities clause; and
- (c) a waiver of subrogation in favour of the protected person;

“acceptable security” means either—

- (a) evidence provided to the protected person’s reasonable satisfaction that the undertaker has a tangible net worth of not less than £100,000,000 (one hundred million pounds) (or an equivalent financial measure); or
- (b) a parent company guarantee from the undertaker’s ultimate parent company such company having a tangible net worth of not less than £100,000,000 (one hundred million pounds) (or an equivalent financial measure) in favour of the protected person to cover the undertaker’s liability to the protected person to a cap of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty-five million pounds) in a form satisfactory to the protected person in its reasonable opinion; or
- (c) a bank bond or letter of credit from an acceptable credit provider in favour of the protected person to cover the undertaker’s liability to the protected person for an amount of not less than £10,000,000 (ten million pounds) per asset per event up to a total liability cap of £25,000,000 (twenty-five million pounds) in a form satisfactory to the protected person in its reasonable opinion;

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“alternative apparatus” means appropriate alternative apparatus to the satisfaction of the protected person to enable the protected person in question to fulfil its statutory functions in a manner no less efficient than previously;

“apparatus” means electric lines or electrical plant as defined in the Electricity Act 1989, belonging to or maintained by the protected person;

“commence” has the same meaning as in article 2 but for the purposes of this Part of this Schedule any works whatsoever which are near to or may affect apparatus of the protected person shall be included within this definition and for the avoidance of doubt this includes works for the diversion or laying of services;

“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, across, along or upon such land;

“maintain” and “maintenance” shall include the ability and right to do any of the following in relation to any apparatus or alternative apparatus of the protected person including construct, use, repair, alter, inspect, renew or remove the apparatus;

“plan” or “plans” include 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; and

“protected person” means National Grid Electricity Transmission plc.

**Commencement Information**

**I2** Sch. 12 Pt. 2 para. 2 in force at 6.8.2014, see [art. 1](#)

**3.** Except for paragraphs 4 (apparatus in stopped up streets), and 9 (retained apparatus: protection), 10 (expenses) and 11 (indemnity) this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the protected person are regulated by the provisions of Part 3 of the 1991 Act.

**Commencement Information**

**I3** Sch. 12 Pt. 2 para. 3 in force at 6.8.2014, see [art. 1](#)

**Commencement Information**

**I2** Sch. 12 Pt. 2 para. 2 in force at 6.8.2014, see [art. 1](#)

**I3** Sch. 12 Pt. 2 para. 3 in force at 6.8.2014, see [art. 1](#)

**Apparatus of protected person in stopped up streets**

**4.—(1)** Where any street is stopped up under this Order, any protected person whose apparatus is in the street or accessed via that street shall be entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker will grant to the protected person legal easements reasonably satisfactory to the specified protected person in respect of such apparatus and access to it prior to the stopping up of any such street or highway.

**(2)** Notwithstanding the temporary stopping up or diversion of any highway under the powers of article 16 (temporary stopping up of streets), or otherwise under this Order, a protected person shall be at liberty at all times to take all necessary access across any such stopped up highway and/or to

execute and do all such works and things in, upon or under any such highway as may be reasonably necessary or desirable to enable it to maintain any apparatus which at the time of the stopping up or diversion was in that highway.

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**Commencement Information**

**I4** Sch. 12 Pt. 2 para. 4 in force at 6.8.2014, see [art. 1](#)

**Protective works to buildings**

**5.—(1)** The undertaker, in the case of the powers conferred by this Order shall so exercise those powers as not to obstruct or render less convenient the access to any apparatus without the written consent of the protected person and, if by reason of the exercise of those powers any damage to any apparatus (other than apparatus the repair of which is not reasonably necessary in view of its intended removal or abandonment) or property of any protected person or any interruption in the supply of electricity, gas or water, as the case may be, by the protected person is caused, the undertaker shall bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and, subject to sub-paragraph (2), shall—

- (a) make compensation to the protected person for any loss sustained by it; and
- (b) indemnify the protected person in relation to all claims, demands, proceedings, costs, damages and expenses which may be made or taken against or recovered from or incurred by that protected person, by reason of any such damage or interruption.

(2) Nothing in this paragraph shall impose any liability on the undertaker with respect to any damage or interruption to the extent that such damage or interruption is attributable to the act, neglect or default of a protected person or its contractors or workmen; and the protected person shall give to the undertaker reasonable notice of any claim or demand as aforesaid and no settlement or compromise thereof shall be made without first consulting the undertaker and giving it an opportunity to make representations as to the claim or demand.

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**Commencement Information**

**I5** Sch. 12 Pt. 2 para. 5 in force at 6.8.2014, see [art. 1](#)

**Acquisition of land**

**6.—(1)** Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not acquire any apparatus or override any easement or other interest of a protected person or acquire any land or other interest of a protected person or create any new rights over the same otherwise than by agreement of the relevant protected person such agreement not to be unreasonably withheld or delayed (having regard to the protected person's existing and future requirements for such land or interests).

(2) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker shall not interfere with any communications cables or equipment used by the protected person in relation to its apparatus or acquire or interfere with any rights or interests supporting the use, maintenance or renewal of such equipment otherwise than by agreement of the relevant protected person (such agreement not to be unreasonably withheld or delayed).

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#### Commencement Information

**I6** Sch. 12 Pt. 2 para. 6 in force at 6.8.2014, see [art. 1](#)

### Removal of apparatus

7.—(1) If, in the exercise of agreement reached in accordance with paragraph 6 or in any other authorised manner, the undertaker acquires any interest in any land in which any apparatus of the protected person is placed, that apparatus shall not be removed under this part of this Schedule and any right of a protected person to maintain that apparatus in that land shall not be extinguished until alternative apparatus has been constructed, and is in operation to the reasonable satisfaction of the protected person in question in accordance with sub-paragraph (2) to (5) inclusive.

(2) If, for the purpose of executing any works in, on, under or over any land purchased, held, appropriated or used under this Order, the undertaker requires the removal of any apparatus placed in that land, it shall give to the protected person in question 56 days' advance written notice of that requirement, together with a plan of the work proposed, 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 a protected person reasonably needs to remove any of its apparatus) the undertaker shall, subject to sub-paragraph (3), afford to the protected person to their satisfaction (taking into account paragraph 8(1) below) the necessary facilities and rights for—

- (a) the construction of alternative apparatus in other land of the undertaker; and
- (b) subsequently for the maintenance of that apparatus.

(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, the protected person in question shall, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances in an endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed save that this obligation shall not extend to the requirement for the protected person to use its compulsory purchase powers to this end unless it elects to so do.

(4) Any alternative apparatus to be constructed in land of the undertaker under this part of this Schedule shall be constructed in such manner and in such line or situation as may be agreed between the protected person in question and the undertaker (both acting reasonably).

(5) The protected person in question shall, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the protected person 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 any apparatus required by the undertaker to be removed under the provisions of this part of this Schedule.

#### Commencement Information

**I7** Sch. 12 Pt. 2 para. 7 in force at 6.8.2014, see [art. 1](#)

### Facilities and rights for alternative apparatus

8.—(1) Where, in accordance with the provisions of this part of this Schedule, the undertaker affords to a protected person facilities and rights for the construction and maintenance in land of the undertaker of alternative apparatus in substitution for apparatus to be removed, those facilities and

rights shall be granted upon such terms and conditions as may be agreed between the undertaker and the protected person in question (both acting reasonably) and shall be no less favourable on the whole to the protected person in question than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless agreed by the protected person.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the protected person under sub-paragraph (1) above in respect of any alternative apparatus, and the terms and conditions subject to which those facilities and rights are to be granted, are less favourable on the whole to the protected person in question 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 then the matter shall be referred to arbitration and the arbitrator shall make such provision for the payment of compensation by the undertaker to that protected person as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

**Commencement Information**

**18** Sch. 12 Pt. 2 para. 8 in force at 6.8.2014, see [art. 1](#)

**Retained apparatus: protection: electricity undertakers**

**9.**—(1) Not less than 56 days before commencing the execution of any works authorised by 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 7(2) or otherwise, the undertaker shall submit to the protected person in question a plan.

(2) In relation to any works which will or may be situated on, over, under or within 25 metres measured in any direction of any apparatus, or involve embankment works within 25 metres of any apparatus, the plan to be submitted to the protected person under sub-paragraph (1) shall be detailed including a material statement and describing—

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

(3) The undertaker shall not commence the construction or renewal of any works to which sub-paragraph (2) applies until—

- (a) the protected person has given written approval of the plan so submitted;
- (b) the protected person has confirmed in writing that it is satisfied in its reasonable opinion that the undertaker has provided acceptable security and provided evidence that the undertaker shall maintain such acceptable security for the construction period of the onshore works authorised by the Order; and
- (c) the protected person has confirmed in writing that it is satisfied in its reasonable opinion that the undertaker has procured acceptable insurance and provided evidence that it shall maintain such acceptable insurance for the construction period of the onshore works authorised by the Order.

(4) Any approval of the protected person required under sub-paragraph (2)—

- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);

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(b) shall not be unreasonably withheld.

(5) In relation to a work to which sub-paragraph (2) applies, the protected person may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its system against interference or risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.

(6) Works executed under this Order shall be executed only in accordance with the plan, submitted under sub-paragraph (1) or, as relevant, sub-paragraph (4), as amended from time to time by agreement between the undertaker and the protected person and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the protected person for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the protected person shall be entitled to watch and inspect the execution of those works.

(7) Where the protected person requires any protective works to be carried out either by the protected person itself or by the undertaker (whether of a temporary or permanent nature) such protective works shall be carried out to the protected person's satisfaction prior to the carrying out of any works authorised by the Order (or any relevant part thereof) and the protected person shall give 56 days' notice of such works from the date of approval of a plan submitted in line with sub-paragraph (1) or (4) (except in an emergency).

(8) If a protected person in accordance with sub-paragraph (5) or (7) 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 3 and 6 to 8 shall apply as if the removal of the apparatus had been required by the undertaker under paragraph 7(2).

(9) Nothing in this paragraph shall preclude the undertaker from submitting at any time or from time to time, but in no case shall the execution of any works commence until 56 days have lapsed following submission, of any new plan instead of the plan previously submitted, and having done so the provisions of this paragraph shall apply to and in respect of the new plan.

(10) The undertaker shall not be required to comply with sub-paragraph (1) where it needs to carry out emergency works as defined in the 1991 Act but in that case it shall give to the protected person in question notice as soon as is reasonably practicable and a plan of those works and shall—

- (a) comply with sub-paragraph (5), (6) and (7) insofar as is reasonably practicable in the circumstances; and
- (b) comply with sub-paragraph (11) at all times.

(11) At all times when carrying out any works authorised under the Order the undertaker shall comply with National Grid's policies for development near overhead lines EN43-8 and the Health and Safety Executive's guidance note 6 "Avoidance of Danger from Overhead Lines".

**Commencement Information**

**I9** Sch. 12 Pt. 2 para. 9 in force at 6.8.2014, see [art. 1](#)

**Expenses**

**10.**—(1) Subject to the following provisions of this paragraph, the undertaker shall repay to a protected person on demand all charges, costs and expenses reasonably incurred by that protected person in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new apparatus which may be required in consequence of the execution of any such works as are referred to in this Part of this Schedule including without limitation—

- (a) any costs reasonably incurred or compensation properly paid in connection with the acquisition of rights or the exercise of statutory powers for such apparatus including

without limitation in the event that the protected person elects to use compulsory purchase powers to acquire any necessary rights under paragraph 7(3) all costs incurred as a result of such action;

- (b) in connection with the cost of the carrying out of any diversion work or the provision of any alternative apparatus;
- (c) the cutting off of any apparatus from any other apparatus or the making safe of redundant apparatus;
- (d) the approval of plans;
- (e) the carrying out of protective works, plus a capitalised sum to cover the cost of maintaining and renewing permanent protective works;
- (f) the survey of any land, apparatus or works, the inspection and monitoring of works or the installation or removal of any temporary works reasonably necessary in consequence of the execution of any such works referred to in this Schedule.

(2) There shall be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under the provisions of this Schedule and which is not re-used as part of the alternative apparatus, 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 settled by arbitration in accordance with article 42 (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 protected person in question by virtue of sub-paragraph (1) shall be reduced by the amount of that excess save where it is not possible in the circumstances to obtain the existing type of operations, capacity, dimensions or place at the existing depth in which case full costs shall be borne by the undertaker.

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

- (a) an extension of apparatus to a length greater than the length of existing apparatus shall 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 shall 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 protected person in respect of works by virtue of sub-paragraph (1) shall, 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 protected person 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.

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**Commencement Information**

**110** Sch. 12 Pt. 2 para. 10 in force at 6.8.2014, see [art. 1](#)

**Indemnity**

**11.**—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any such works authorised by this Schedule or in consequence of the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker or in consequence of any act or default of the undertaker (or any person employed or authorised by it) in the course of carrying out such works, including without limitation works carried out by the undertaker or a protected person under this Schedule or any subsidence resulting from any of these works, any damage is caused to any apparatus or alternative 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 a protected person, or there is any interruption in any service provided, or in the supply of any goods, by any protected person, or the protected person becomes liable to pay any amount to any third party, the undertaker shall—

- (a) bear and pay on demand the cost reasonably incurred by that protected person in making good such damage or restoring the supply; and
- (b) indemnify that protected person for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the protected person, by reason or in consequence of any such damage or interruption or the protected person becoming liable to any third party.

(2) The fact that any act or thing may have been done by a protected person on behalf of the undertaker or in accordance with a plan approved by a protected person or in accordance with any requirement of a protected person or under its supervision shall not (subject to sub-paragraph (3)), excuse the undertaker from liability under the provisions of this sub-paragraph (1).

(3) Nothing in sub-paragraph (1) shall impose any liability on the undertaker with respect to any damage or interruption to the extent that it is attributable to the neglect or default of a protected person, its officers, servants, contractors or agents.

**Commencement Information**

**111** Sch. 12 Pt. 2 para. 11 in force at 6.8.2014, see [art. 1](#)

**Ground subsidence monitoring scheme in respect of protected person’s apparatus**

**12.**—(1) No works within 100 metres of any apparatus or alternative apparatus which are capable of interfering with or risking damage to a protected person’s apparatus shall commence until a scheme for monitoring ground subsidence (referred to in this paragraph as the “monitoring scheme”) has been submitted to and approved by the relevant protected person, such approval not to be unreasonably withheld.

- (2) The monitoring scheme described in sub-paragraph (1) shall set out—
  - (a) the apparatus which is to be subject to such monitoring;
  - (b) the extent of land to be monitored;
  - (c) the manner in which ground levels are to be monitored;
  - (d) the timescales of any monitoring activities; and



(e) the extent of ground subsidence which, if exceeded, shall require the undertaker to submit for the protected person's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (4).

(3) The monitoring scheme required by sub-paragraphs (1) and (2) must be submitted within 56 days prior to the commencement of any works authorised by this Order or comprised within the authorised development, and any requirements of the protected person will be notified within 28 days of receipt of the monitoring scheme; thereafter the monitoring scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

(4) As soon as reasonably practicable after any ground subsidence identified by the monitoring activities set out in the monitoring scheme has exceeded the level described in sub-paragraph (2)(e), a scheme setting out necessary mitigation measures (if any) for such ground subsidence (referred to in this paragraph as a "mitigation scheme") shall be submitted to the protected person for approval, such approval not to be unreasonably withheld; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person save that the protected persons retains the right to carry out any further necessary protective works for the safeguarding of their apparatus and can recover any such costs in line with paragraph 10.

(5) If the monitoring scheme or mitigation scheme would conflict with any aspect of any scheme approved by the relevant planning authority pursuant to Part 3 of Schedule 1 (requirements) the undertaker may submit a revised monitoring scheme or mitigation scheme to the protected person for its approval, such approval not to be unreasonably withheld; and the revised monitoring scheme or mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the protected person.

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#### **Commencement Information**

**I12** Sch. 12 Pt. 2 para. 12 in force at 6.8.2014, see [art. 1](#)

### **Enactments and agreements**

**13.** Nothing in this part of this Schedule shall affect the provisions of any enactment or agreement regulating the relations between the undertaker and a protected person in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

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#### **Commencement Information**

**I13** Sch. 12 Pt. 2 para. 13 in force at 6.8.2014, see [art. 1](#)

### **Co-operation**

**14.** Where in consequence of the proposed construction of any of the authorised development, the undertaker or a protected person requires the removal of apparatus under paragraph 7(2) or a protected person makes requirements for the protection or alteration of apparatus under paragraph 9, the undertaker shall use its best endeavours to co-ordinate the execution of the works in the interests of safety and the need to ensure the safe and efficient operation of the protected person's undertaking taking into account the undertaker's desire for the efficient and economic execution of the authorised development and the undertaker and the protected person shall use best endeavours to co-operate with each other for those purposes.

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**Commencement Information**

**I14** Sch. 12 Pt. 2 para. 14 in force at 6.8.2014, see [art. 1](#)

**Access**

**15.** If in consequence of an agreement reached in accordance with paragraph 6(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker shall provide such alternative means of access to such apparatus as will enable the protected person to maintain or use the apparatus no less effectively than was possible before such obstruction.

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**Commencement Information**

**I15** Sch. 12 Pt. 2 para. 15 in force at 6.8.2014, see [art. 1](#)

**Arbitration**

**16.** Save for differences or disputes arising under paragraph 7(2), 7(4), 8(1) and 9 any difference or dispute arising between the undertaker and a protected person under this Part of this Schedule shall, unless otherwise agreed in writing between the undertaker and that protected person, be determined by arbitration in accordance with article 42 (arbitration).

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**Commencement Information**

**I16** Sch. 12 Pt. 2 para. 16 in force at 6.8.2014, see [art. 1](#)

**Transfer of agreements**

**17.** Regardless of any provision in this Order (including article 7), the undertaker shall not transfer to another person any or all of the benefit of the provisions of this Order unless such person has first entered into a direct covenant in favour of the protected person on terms acceptable to the protected person (acting reasonably) requiring the transferee to observe and perform the obligations under any agreement entered into by the undertaker with the protected person in relation to or pursuant to the provisions in this Schedule.

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**Commencement Information**

**I17** Sch. 12 Pt. 2 para. 17 in force at 6.8.2014, see [art. 1](#)

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**Changes and effects yet to be applied to the whole Instrument associated Parts and Chapters:**

Whole provisions yet to be inserted into this Instrument (including any effects on those provisions):

- Sch. 1 Pt. 3 para. 15(1) substituted by [S.I. 2021/535 art. 5\(a\)](#)
- Sch. 1 Pt. 3 para. 15(2) substituted by [S.I. 2021/535 art. 5\(b\)](#)