

SCHEDULES

SCHEDULE 13

Articles 32, 40 and 45

PROTECTIVE PROVISIONS

PART 1

FOR THE PROTECTION OF RAILWAY INTERESTS

1. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Network Rail and, in the case of paragraph 15, any other person on whom rights or obligations are conferred by that paragraph.

2. In this Part of this Schedule—

“construction” includes execution, placing, alteration and reconstruction and “construct” and “constructed” are to be construed accordingly;

“the engineer” means an engineer appointed by Network Rail for the purposes of this Order;

“network licence” means the network licence, as the same is amended from time to time, granted to Network Rail Infrastructure Limited by the Secretary of State in exercise of powers under section 8 of the Railways Act 1993⁽¹⁾;

“Network Rail” means Network Rail Infrastructure Limited (company number 02904587, whose registered office is at 1 Eversholt Street, London, NW1 2DN) and any associated company of Network Rail Infrastructure Limited which holds property for railway purposes, and for the purpose of this definition “associated company” means any company which is (within the meaning of section 1159 of the Companies Act 2006⁽²⁾) the holding company of Network Rail Infrastructure Limited, a subsidiary of Network Rail Infrastructure Limited or another subsidiary of the holding company of Network Rail Infrastructure Limited;

“plans” includes sections, designs, design data, software, drawings, specifications, soil reports, calculations, descriptions (including descriptions of methods of construction), staging proposals, programmes and details of the extent, timing and duration of any proposed occupation of railway property;

“railway operational procedures” means procedures specified under any access agreement (as defined in the Railways Act 1993) or station lease;

“railway property” means any railway belonging to Network Rail and—

- (a) any station, land, works, apparatus and equipment belonging to Network Rail or connected with any such railway; and
- (b) any easement or other property interest held or used by Network Rail for the purposes of such railway or works, apparatus or equipment; and

(1) 1993 c. 43. Section 8 was amended by paragraph 3 of Schedule 20 to the Railways and Transport Safety Act 2003 (c. 20), paragraph 1 of Schedule 13(1) to the Railways Act 2005 (c. 14) and paragraph 4 of Schedule 17 to the Transport Act 2000 (c. 38). There are other amendments not relevant to this Order.

(2) 2006 c.46.

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“specified work” means so much of any of the authorised development as is situated upon, across, under, over or within 15 metres of, or may in any way adversely affect, railway property.

3.—(1) Where under this Part of this Schedule Network Rail is required to give its consent, agreement or approval in respect of any matter, that consent, agreement or approval is subject to the condition that Network Rail complies with any relevant railway operational procedures and any obligations under its network licence or under statute.

(2) In so far as any specified work or the acquisition or use of railway property is or may be subject to railway operational procedures, Network Rail must—

- (a) co-operate with the undertaker with a view to avoiding undue delay and securing conformity as between any plans approved by the engineer and requirements emanating from those procedures; and
- (b) use their reasonable endeavours to avoid any conflict arising between the application of those procedures and the proper implementation of the authorised development under this Order.

4.—(1) The undertaker must not exercise the powers conferred by article 18 (protective work to buildings), 19 (authority to survey and investigate the land), 20 (compulsory acquisition of land), 23 (compulsory acquisition of rights), 24 (private rights), 29 (temporary use of land for carrying out the authorised development) or 30 (temporary use of land for maintaining authorised development) or the powers conferred by section 11(3) (powers of entry) of the 1965 Act in respect of any railway property unless the exercise of such powers is with the consent of Network Rail.

(2) The undertaker must not in the exercise of the powers conferred by this Order prevent pedestrian or vehicular access to any railway property, unless preventing such access is with the consent of Network Rail.

(3) The undertaker must not exercise the powers conferred by sections 271 (extinguishment of rights of statutory undertakers: preliminary notices) or 272 (extinguishment of rights of telecommunications code system operators: preliminary notices) of the 1990 Act in relation to any right of access of Network Rail to railway property, but such right of access may be diverted with the consent of Network Rail.

(4) The undertaker must not under the powers conferred by this Order acquire or use, or acquire new rights over, any railway property except with the consent of Network Rail.

(5) Prior to commencement of construction of the authorised development the undertaker must have obtained the approval of Network Rail to the design, specification, programme of works and method statement for the implementation of any works in respect of the railway crossing of the Norwich to Cromer and Sheringham railway line at Rackheath, Norwich, approximately 110 metres (measured along the railway line) north of the level crossing on the C874 Plumstead Road and the undertaker must then comply with the provisions of the approved design, specification, programme of works and method statement.

(6) Prior to commencement of construction of the authorised development the undertaker must have obtained the approval of Network Rail to the design, specification, programme of works and method statement for the implementation of any works in respect of the bridge crossing the C874 Plumstead Road, Norwich (approximately 80 metres east of the railway crossing referred to in sub-paragraph (5)) provided that Network Rail may only approve those aspects of the design and specification that could affect the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property and the undertaker must then comply with the provisions of the approved design, specification, programme of works and method statement.

(7) Where Network Rail is asked to give its consent or agreement under this paragraph, such consent or agreement must not be unreasonably withheld but may be given subject to reasonable conditions.

5.—(1) The undertaker must before commencing construction of any specified work supply to Network Rail proper and sufficient plans of that work for the reasonable approval of the engineer and the specified work must not be commenced except in accordance with such plans as have been approved in writing by the engineer or settled by arbitration.

(2) The approval of the engineer under sub-paragraph (1) must not be unreasonably withheld, and if by the end of the period of 28 days beginning with the date on which such plans have been supplied to Network Rail the engineer has not intimated disapproval of those plans and the grounds of disapproval the undertaker may serve upon the engineer written notice requiring the engineer to intimate approval or disapproval within a further period of 28 days beginning with the date upon which the engineer receives written notice from the undertaker. If by the expiry of the further 28 days the engineer has not intimated approval or disapproval, the engineer is to be deemed to have approved the plans as submitted.

(3) If by the end of the period of 28 days beginning with the date on which written notice was served upon the engineer under sub-paragraph (2), Network Rail gives notice to the undertaker that Network Rail desires itself to construct any part of a specified work which in the opinion of the engineer will or may affect the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker desires such part of the specified work to be constructed, Network Rail must construct it without unnecessary delay on behalf of and to the reasonable satisfaction of the undertaker in accordance with the plans approved or deemed to be approved or settled under this paragraph, and under the supervision (where appropriate and if given) of the undertaker.

(4) When signifying approval of the plans the engineer may specify any protective works (whether temporary or permanent) which in the engineer's opinion should be carried out before the commencement of the construction of a specified work to ensure the safety or stability of railway property or the continuation of safe and efficient operation of the railways of Network Rail or the services of operators using those railways (including any relocation de-commissioning and removal of works, apparatus and equipment necessitated by a specified work and the comfort and safety of passengers who may be affected by the specified works), and such protective works as may be reasonably necessary for those purposes must be constructed by Network Rail or by the undertaker, if Network Rail so desires, and such protective works are to be carried out at the expense of the undertaker in either case without unnecessary delay and the undertaker must not commence the construction of the specified works until the engineer has notified the undertaker that the protective works have been completed to his reasonable satisfaction.

6.—(1) Any specified work and any protective works to be constructed under paragraph 5(4) must, when commenced, be constructed—

- (a) without unnecessary delay in accordance with the plans approved or deemed to have been approved or settled under paragraph 5;
- (b) under the supervision (where appropriate and if given) and to the reasonable satisfaction of the engineer;
- (c) in such manner as to cause as little damage as is possible to railway property; and
- (d) so far as is reasonably practicable, so as not to interfere with or obstruct the free, uninterrupted and safe use of any railway of Network Rail or the traffic on it and the use by passengers of railway property.

(2) If any damage to railway property or any such interference or obstruction is caused by the carrying out of, or in consequence of the construction of a specified work, the undertaker

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must, regardless of any such approval, make good such damage and must pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may sustain by reason of any such damage, interference or obstruction.

(3) 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 Network Rail or its servants, contractors or agents or any liability on Network Rail with respect of any damage, costs, expenses or loss attributable to the negligence of the undertaker or its servants, contractors or agents.

7. The undertaker must—

- (a) at all times afford reasonable facilities to the engineer for access to a specified work during its construction; and
- (b) supply the engineer with all such information as the engineer may reasonably require with regard to a specified work or the method of constructing it.

8. Network Rail must at all times afford reasonable facilities to the undertaker and its agents for access to any works carried out by Network Rail under this Schedule during their construction and must supply the undertaker with such information as it may reasonably require with regard to such works or the method of constructing them.

9.—(1) If any permanent or temporary alterations or additions to railway property, are reasonably necessary in consequence of the construction of a specified work, or during a period of 24 months after the completion of that work in order to ensure the safety of railway property or the continued safe operation of the railways of Network Rail, such alterations and additions may be carried out by Network Rail and if Network Rail gives to the undertaker reasonable notice of its intention to carry out such alterations or additions (which must be specified in the notice), the undertaker must pay to Network Rail the reasonable cost of those alterations or additions including, in respect of any such alterations and additions as are to be permanent, a capitalised sum representing the increase of the costs which may be expected to be reasonably incurred by Network Rail in maintaining, working and, when necessary, renewing any such alterations or additions.

(2) If during the construction of a specified work by the undertaker, Network Rail gives notice to the undertaker that Network Rail desires itself to construct that part of the specified work which in the opinion of the engineer is endangering the stability of railway property or the safe operation of traffic on the railways of Network Rail then, if the undertaker decides that part of the specified work is to be constructed, Network Rail must assume construction of that part of the specified work and the undertaker must, regardless of any such approval of a specified work under paragraph 5(1), pay to Network Rail all reasonable expenses to which Network Rail may be put and compensation for any loss which it may suffer by reason of the execution by Network Rail of that specified work.

(3) The engineer must, in respect of the capitalised sums referred to in this paragraph and paragraph 10(a) provide such details of the formula by which those sums have been calculated as the undertaker may reasonably require.

(4) If the cost of maintaining, working or renewing railway property is reduced in consequence of any such alterations or additions a capitalised sum representing such saving is to be set off against any sum payable by the undertaker to Network Rail under this paragraph.

10. The undertaker must repay to Network Rail all reasonable fees, costs, charges and expenses reasonably incurred by Network Rail—

- (a) in constructing any part of a specified work on behalf of the undertaker as provided by paragraph 5(3) or in constructing any protective works under the provisions of paragraph 5(4) including, in respect of any permanent protective works, a capitalised sum representing the cost of maintaining and renewing those works;
- (b) in respect of the approval by the engineer of plans submitted by the undertaker and the supervision by the engineer of the construction of a specified work;

- (c) in respect of the employment or procurement of the services of any inspectors, signallers, watchkeepers and other persons whom it is reasonably necessary to appoint for inspecting, signalling, watching and lighting railway property and for preventing, so far as may be reasonably practicable, interference, obstruction, danger or accident arising from the construction or failure of a specified work;
- (d) in respect of any special traffic working resulting from any speed restrictions which may in the opinion of the engineer, require to be imposed by reason or in consequence of the construction or failure of a specified work or from the substitution or diversion of services which may be reasonably necessary for the same reason; and
- (e) in respect of any additional temporary lighting of railway property in the vicinity of the specified works, being lighting made reasonably necessary by reason or in consequence of the construction or failure of a specified work.

11.—(1) In this paragraph—

“EMI” means, subject to sub-paragraph (2), electromagnetic interference with Network Rail apparatus generated by the construction and operation of the authorised development where such interference is of a level which adversely affects the safe operation of Network Rail’s apparatus; and

“Network Rail’s apparatus” means any lines, circuits, wires, apparatus or equipment (whether or not modified or installed as part of the authorised development) which are owned or used by Network Rail for the purpose of transmitting or receiving electrical energy or of radio, telegraphic, telephonic, electric, electronic or other like means of signalling or other communications.

(2) This paragraph applies to EMI only to the extent that such EMI is not attributable to any change to Network Rail’s apparatus carried out after approval of plans under paragraph 5(1) for the relevant part of the authorised development giving rise to EMI (unless the undertaker has been given notice in writing before the approval of those plans of the intention to make such change).

(3) Subject to sub-paragraph (5), the undertaker must in the design and construction of the authorised development take all measures necessary to prevent EMI and must establish with Network Rail (both parties acting reasonably) appropriate arrangements to verify their effectiveness.

(4) In order to facilitate the undertaker’s compliance with sub-paragraph (3)—

- (a) the undertaker must consult with Network Rail as early as reasonably practicable to identify all Network Rail’s apparatus which may be at risk of EMI, and must continue to consult with Network Rail (both before and after formal submission of plans under paragraph 5(1)) in order to identify all potential causes of EMI and the measures required to eliminate them;
- (b) Network Rail must make available to the undertaker all information in the possession of Network Rail reasonably requested by the undertaker in respect of Network Rail’s apparatus identified under paragraph (a); and
- (c) Network Rail must allow the undertaker reasonable facilities for the inspection of Network Rail’s apparatus identified under paragraph (a).

(5) In any case where it is established that EMI can only reasonably be prevented by modifications to Network Rail’s apparatus, Network Rail must not withhold its consent unreasonably to modifications of Network Rail’s apparatus, but the means of prevention and the method of their execution is to be selected in the reasonable discretion of Network Rail, and in relation to such modifications paragraph 5(1) is to have effect subject to this sub-paragraph.

(6) If at any time prior to the opening for traffic of the authorised development and regardless of any measures adopted under sub-paragraph (3), the testing or commissioning of the authorised development causes EMI then the undertaker must immediately upon receipt of notification by

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Network Rail of such EMI either in writing or communicated orally (such oral communication to be confirmed in writing as soon as reasonably practicable after it has been issued) cease to use (or procure the cessation of use of) the undertaker's apparatus causing such EMI until all measures necessary have been taken to remedy such EMI by way of modification to the source of such EMI or (in the circumstances, and subject to the consent, specified in sub-paragraph (5)) to Network Rail's apparatus.

(7) In the event of EMI having occurred—

- (a) the undertaker must afford reasonable facilities to Network Rail for access to the undertaker's apparatus in the investigation of such EMI;
- (b) Network Rail must afford reasonable facilities to the undertaker for access to Network Rail's apparatus in the investigation of such EMI; and
- (c) Network Rail must make available to the undertaker any additional material information in its possession reasonably requested by the undertaker in respect of Network Rail's apparatus or such EMI.

(8) Where Network Rail approves modifications to Network Rail's apparatus under sub-paragraph (5) or (6)—

- (a) Network Rail must allow the undertaker reasonable facilities for the inspection of the relevant part of Network Rail's apparatus;
- (b) any modifications to Network Rail's apparatus approved under those sub-paragraphs must be carried out and completed by the undertaker in accordance with paragraph 6.

(9) To the extent that it would not otherwise do so, the indemnity in paragraph 15(1) is to apply to the costs and expenses reasonably incurred or losses suffered by Network Rail through the implementation of the provisions of this paragraph (including costs incurred in connection with the consideration of proposals, approval of plans, supervision and inspection of works and facilitating access to Network Rail's apparatus) or in consequence of any EMI to which sub-paragraph (6) applies.

(10) For the purpose of paragraph 10(a) any modifications to Network Rail's apparatus under this paragraph are to be deemed to be protective works referred to in that paragraph.

12. If at any time after the completion of a specified work, not being a work vested in Network Rail, Network Rail gives notice to the undertaker informing it that the state of maintenance of any part of the specified work appears to be such as adversely affects the operation of railway property, 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 railway property.

13. The undertaker must not provide any illumination or illuminated sign or signal on or in connection with a specified work in the vicinity of any railway belonging to Network Rail unless it has first consulted Network Rail and it must comply with Network Rail's reasonable requirements for preventing confusion between such illumination or illuminated sign or signal and any railway signal or other light used for controlling, directing or securing the safety of traffic on the railway.

14. Any additional expenses which Network Rail may reasonably incur in altering, reconstructing or maintaining railway property under any powers existing at the making of this Order by reason of the existence of a specified work must, provided that 56 days' previous notice of the commencement of such alteration, reconstruction or maintenance has been given to the undertaker, be repaid by the undertaker to Network Rail.

15.—(1) The undertaker must pay to Network Rail all reasonable costs, charges, damages and expenses not otherwise provided for in this Part of this Schedule which may be occasioned to or reasonably incurred by Network Rail—

- (a) by reason of the construction or maintenance of a specified work or the failure of such a work; 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 upon a specified work,

and the undertaker must indemnify and keep indemnified Network Rail from and against all claims and demands arising out of or in connection with a specified work or any such failure, act or omission: and the fact that any act or thing may have been done by Network Rail on behalf of the undertaker or in accordance with plans approved by the engineer or in accordance with any requirement of the engineer or under the engineer's supervision does not (if it was done without negligence on the part of Network Rail or of any person in its employ or of its contractors or agents) excuse the undertaker from any liability under the provisions of this sub-paragraph.

(2) Network Rail must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of such a claim or demand is to be made without the prior consent of the undertaker.

(3) The sums payable by the undertaker under sub-paragraph (1) include a sum equivalent to the relevant costs.

(4) Subject to the terms of any agreement between Network Rail and a train operator regarding the timing or method of payment of the relevant costs in respect of that train operator, Network Rail must promptly pay to each train operator the amount of any sums which Network Rail receives under sub-paragraph (3) which relates to the relevant costs of that train operator.

(5) The obligation under sub-paragraph (3) to pay Network Rail the relevant costs is, in the event of default, enforceable directly by any train operator concerned to the extent that such sums would be payable to that operator under sub-paragraph (4).

(6) In this paragraph—

“the relevant costs” means the costs, direct losses and expenses (including loss of revenue) reasonably incurred by each train operator as a consequence of any restriction of the use of Network Rail's railway network as a result of the construction, maintenance or failure of a specified work or any such act or omission as mentioned in subparagraph (1); and

“train operator” means any person who is authorised to act as the operator of a train by a licence under section 8 of the Railways Act 1993.

16. Network Rail must, on receipt of a request from the undertaker, from time to time provide the undertaker free of charge with written estimates of the costs, charges, expenses and other liabilities for which the undertaker is or will become liable under this Part of this Schedule (including the amount of the relevant costs mentioned in paragraph 15) and with such information as may reasonably enable the undertaker to assess the reasonableness of any such estimate or claim made or to be made under this Part of this Schedule (including any claim relating to those relevant costs).

17. In the assessment of any sums payable to Network Rail under this Part of this Schedule no account is to be taken of any increase in the sums claimed that is attributable to any action taken by or any agreement entered into by Network Rail if that action or agreement was not reasonably necessary and was taken or entered into with a view to obtaining the payment of those sums by the undertaker under this Part of this Schedule or increasing the sums so payable.

18. The undertaker and Network Rail may, subject in the case of Network Rail to compliance with the terms of its network licence, enter into, and carry into effect, agreements for the transfer to the undertaker of—

- (a) any railway property shown on the works plans and the land plans and described in the book of reference;
- (b) any lands, works or other property held in connection with any such railway property; and

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- (c) any rights and obligations (whether or not statutory) of Network Rail relating to any railway property or any lands, works or other property referred to in this paragraph.

19. Nothing in this Order, or in any enactment incorporated with or applied by this Order, prejudices or affects the operation of Part 1 of the Railways Act 1993.

20. The undertaker must give written notice to Network Rail when any application is proposed to be made by the undertaker for the Secretary of State's certification, under article 41 (certification of plans etc.) and any such notice must be given no later than 28 days before any such application is made and must describe or give (as appropriate)—

- (a) the nature of the application to be made;
- (b) the extent of the geographical area to which the application relates; and
- (c) the name and address of the person acting for the Secretary of State to whom the application is to be made.

21. The undertaker must, no later than 28 days from the date that the plans submitted to the Secretary of State in accordance with article 41 (certification of plans etc.) are certified, provide a set of those plans to Network Rail in the form of a computer disc with read only memory.

PART 2

FOR THE PROTECTION OF NATIONAL GRID

Application

22. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and the statutory undertaker.

Interpretation

23.—(1) In this part of this Schedule—

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

“apparatus” means any mains, pipes or other apparatus belonging to or maintained by the statutory undertaker, any replacement apparatus and such other apparatus constructed under the powers conferred by this Order that becomes operational apparatus of the statutory undertaker for the purposes of gas transmission, distribution or supply and includes any structure in which apparatus is or is to be lodged or which gives or is to give access to apparatus;

“authorised works” has the same meaning as “authorised development” in article 2 (interpretation), and for the purposes of this Part of this Schedule includes the use and maintenance of the authorised works;

“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;

“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 and assess the works to be executed;

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“the statutory undertaker” means National Grid or any of its entities including National Grid Gas plc as gas transporter within the meaning of Part 1 of the Gas Act 1986⁽³⁾ with an interest in the Order land or in apparatus in the Order land.

(2) Nothing in this Part of this Schedule prevents the carrying out of environmental (including archaeological) investigations or site or soil surveys immediately upon this Order coming into force.

24. Except for paragraphs 25 (apparatus in stopped up streets), 30 (retained apparatus), 31 (expenses) and 32 (indemnity) which apply in respect of the exercise of any power under this Order, 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.

Apparatus of statutory undertaker in stopped up streets

25.—(1) Without limitation on the scope of any other protection afforded to the statutory undertaker elsewhere in this Order, where any street is stopped up under the powers conferred by this Order, if the statutory undertaker has apparatus in the street or accessed via that street the statutory undertaker is entitled to the same rights in respect of such apparatus as it enjoyed immediately before the stopping up and the undertaker must grant to the statutory undertaker, or procure the granting to the statutory undertaker of, legal easements reasonably satisfactory to the statutory undertaker in respect of such apparatus and access to it prior to the stopping up of any such street.

(2) Regardless of the temporary stopping up or diversion of any highway under the powers conferred by this Order, the statutory undertaker is at liberty at all times to take all necessary access across any such stopped up highway and 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.

Protective works to buildings

26.—(1) The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus without the written consent of the statutory undertaker 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 the statutory undertaker or any interruption in the supply of gas by the undertaker is caused, the undertaker must bear and pay on demand the cost reasonably incurred by the statutory undertaker in making good such damage or restoring the supply; and, subject to sub-paragraph (2), must—

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

(2) Nothing in this paragraph imposes 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 the statutory undertaker or its contractors or workforce; and the statutory undertaker must give to the undertaker reasonable notice of any such claim or demand and no settlement or compromise of it is to be made, except in respect of any payment required under a statutory compensation scheme, without first consulting the undertaker and giving it an opportunity to make representations as to the claim or demand.

(3) 1986 c. 44.

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Acquisition of land

27.—(1) Regardless of any provision in this Order or anything shown on the land plans or contained in the book of reference, the undertaker may not acquire any land interest or apparatus or override any easement or other interest of the statutory undertaker otherwise than by agreement, such agreement not to be unreasonably withheld or delayed.

(2) As a condition of agreement under sub-paragraph (1), prior to the carrying out of any part of the authorised works (or in such other timeframe as may be agreed between the statutory undertaker and the undertaker) that are subject to the requirements of this Part of this Schedule that will cause any conflict with or breach the terms of any easement or other interest of the statutory undertaker, or affects the provisions of any enactment or agreement regulating the relations between the undertaker and the statutory undertaker in respect of any apparatus laid or erected in land belonging to or secured by the undertaker, the undertaker must as the statutory undertaker reasonably requires enter into such deeds of consent, crossing agreements, variations to existing deeds of easements, agreements or such other legal interests in favour of the statutory undertaker or grant such new deeds of grant (upon such terms and conditions as may be agreed between the statutory undertaker and the undertaker acting reasonably and which must be no less favourable on the whole to the statutory undertaker unless otherwise agreed by the statutory undertaker acting reasonably) in order to vary, amend or replace the existing easements, agreements, enactments and other such interests so as to secure land rights and interests as are necessary to carry out, maintain, operate and use the apparatus in a manner consistent with the other terms of this Part of this Schedule; and it is the responsibility of the undertaker to procure or secure the consent and entering into of such deeds and variations by all other third parties with an interest in the land at that time who are affected by such authorised works.

(3) Where there is any inconsistency or duplication between the provisions set out in this Part of this Schedule relating to the relocation or removal of apparatus (including but not limited to the payment of costs and expenses relating to such relocation or removal of apparatus) and the provisions of any existing easement, rights, agreements and licences granted, used, enjoyed or exercised by the statutory undertaker or other enactments relied upon by the statutory undertaker as of right or other use in relation to the apparatus then the provisions in this Part of this Schedule prevail.

Removal of apparatus

28.—(1) If, in the exercise of the agreement reached in accordance with paragraph 27, or in any other authorised manner, the undertaker 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 the statutory undertaker 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 the statutory undertaker in accordance with sub-paragraphs (2) to (5).

(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 must give to the statutory undertaker 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 the statutory undertaker reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the statutory undertaker to its reasonable satisfaction (taking into account paragraph 29(1)) the necessary facilities and rights—

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

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(3) If alternative apparatus or any part of such apparatus is to be constructed elsewhere than in other land of or secured by 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 statutory undertaker must, 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.

(4) Any alternative apparatus to be constructed in land of or secured by the undertaker under this Part of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the statutory undertaker and the undertaker (both acting reasonably).

(5) The statutory undertaker must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to the statutory undertaker 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.

Facilities and rights for alternative apparatus

29.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to or secures for the statutory undertaker facilities and rights in land for the construction, use, maintenance and protection of alternative apparatus in substitution for apparatus to be removed, those facilities and rights must be granted upon such terms and conditions as may be agreed between the undertaker and the statutory undertaker (both acting reasonably) and must be no less favourable on the whole to the statutory undertaker than the facilities and rights enjoyed by it in respect of the apparatus to be removed unless otherwise agreed by the statutory undertaker.

(2) If the facilities and rights to be afforded by the undertaker and agreed with the statutory undertaker under sub-paragraph (1) 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 statutory undertaker 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 matter must be referred to arbitration in accordance with paragraph 36, and the arbitrator must make such provision for the payment of compensation by the undertaker to the statutory undertaker as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

30.—(1) Not less than 56 days before the commencement of any authorised works that are near to, or will or may affect, any apparatus the removal of which has not been required by the undertaker under paragraph 28(2) or otherwise, the undertaker must submit to the statutory undertaker a plan of the works to be executed.

(2) In relation to works which will or may be situated on, over, under or within 15 metres measured in any direction of any apparatus, or (wherever situated) impose any load directly upon any apparatus or involve embankment works within 15 metres of any apparatus or in the case of demolition works, any demolition works within 150 metres of any apparatus, the removal of which has not been required by the undertaker under paragraph 28(2) or otherwise, the undertaker must submit to the statutory undertaker the plan to be submitted to the undertaker under sub-paragraph (1) which must include a method statement describing—

- (a) the exact position of the works;
- (b) the level at which these are proposed to be constructed or renewed;

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- (c) the manner of their construction or renewal including details of excavation, positioning of plant;
 - (d) the position of all apparatus;
 - (e) by way of detailed drawings, every alteration proposed to be made to or close to any such apparatus; and
 - (f) any intended maintenance regimes.
- (3) The undertaker must not commence any works to which sub-paragraphs (1) and (2) apply until the statutory undertaker has given written approval of the plan so submitted.
- (4) Any approval of the statutory undertaker required under sub-paragraph (3)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (5) or (7);
 - (b) must not be unreasonably withheld; and
 - (c) is subject to the approval process contained in paragraph 37.
- (5) In relation to any work to which sub-paragraphs (1) and (2) apply, the statutory undertaker may require such modifications to be made to the plans as may be reasonably necessary for the purpose of securing its apparatus against risk of damage or for the purpose of providing or securing proper and convenient means of access to any apparatus.
- (6) Works to which this paragraph applies must be executed only in accordance with the plan approved under this paragraph, as amended from time to time by agreement between the undertaker and the statutory undertaker and in accordance with such reasonable requirements as may be made in accordance with sub-paragraph (5) or (7) by the statutory undertaker for the alteration or otherwise for the protection of the apparatus, or for securing access to it, and the statutory undertaker is entitled to watch and inspect the execution of those works.
- (7) Where the statutory undertaker requires any protective works to be carried out by itself or by the undertaker (whether of a temporary or permanent nature) such protective works, including any measures or schemes required and approved as part of the plan approved under this paragraph, must be carried out to the statutory undertaker's reasonable satisfaction prior to the carrying out of any authorised works (or any relevant part of them) for which protective works are required and the statutory undertaker must give 56 days' notice of such works from the date of submission of a plan under this paragraph (except in an emergency).
- (8) If the statutory undertaker 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 22 to 24 and 27 to 29 apply as if the removal of the apparatus had been required by the undertaker under paragraph 28(2).
- (9) Nothing in this paragraph precludes the undertaker from submitting at any time or from time to time, but in no case less than 56 days before commencing the execution of the works, a new plan, instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.
- (10) The undertaker is not 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 must give to the statutory undertaker notice as soon as is reasonably practicable and a plan of those works and must—
- (a) comply with sub-paragraphs (5), (6) and (7) in so far 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 must comply with the statutory undertaker's policies for safe working in proximity to gas apparatus "Specification for safe working in the vicinity of National Grid, High pressure Gas pipelines and

associated installation requirements for third parties T/SP/SSW22” and HSE’s “HS(~G)47 Avoiding Danger from underground services”.

Expenses

31.—(1) Subject to the following provisions, the undertaker must pay to the statutory undertaker on demand all charges, costs and expenses reasonably anticipated or incurred by the statutory undertaker in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus or the construction of any new or alternative apparatus which may be required in consequence of the execution of any 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 statutory undertaker uses compulsory purchase powers to acquire any necessary rights under paragraph 28(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; and
- (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 part of this Schedule.

(2) The value of any apparatus removed under the provisions of this Part of this Schedule and which is not re-used as part of the 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; 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 46 (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 statutory undertaker by virtue of sub-paragraph (1) is to be reduced by the amount of that excess except where it is not possible in the circumstances to obtain the existing type of apparatus at the same capacity and dimensions or place at the existing depth in which case full costs must be borne by the undertaker.

(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 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 pipe or 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 the statutory undertaker in respect of works by virtue of sub-paragraph (1), 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 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.

Indemnity

32.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of any works authorised by this Part of 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 the undertaker) in the course of carrying out such works, including without limitation works carried out by the undertaker under this Part of this Schedule or any subsidence resulting from any of those 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 the statutory undertaker, or there is any interruption in any service provided, or in the supply of any gas, by the statutory undertaker, or the statutory undertaker becomes liable to pay any amount to any third party, the undertaker must—

- (a) bear and pay on demand the cost reasonably incurred by the statutory undertaker in making good such damage or restoring the supply; and
 - (b) indemnify the statutory undertaker for any other expenses, loss, demands, proceedings, damages, claims, penalty or costs incurred by or recovered from the statutory undertaker, by reason or in consequence of any such damage or interruption or the statutory undertaker becoming liable to any third party other than arising from any default of the statutory undertaker.
- (2) The fact that any act or thing may have been done by the statutory undertaker on behalf of the undertaker or in accordance with a plan approved by the statutory undertaker or in accordance with any requirement of the statutory undertaker or under its supervision does not (unless sub-paragraph (3) applies) excuse the undertaker from liability under the provisions of sub-paragraph (1) where the undertaker fails to carry out and execute the works properly with due care and attention and in a skilful and professional manner or in a manner that does not accord with the approved plan.
- (3) Nothing in sub-paragraph (1) imposes any liability on the undertaker in respect of—
- (a) any damage or interruption to the extent that it is attributable to the neglect or default of the statutory undertaker, its officers, servants, contractors or agents; and
 - (b) any authorised works or any other works authorised by this Part of this Schedule carried out by the statutory undertaker as an assignee, transferee or lessee of the undertaker with the benefit of the Order under section 156 of the 2008 Act or article 7 (consent to transfer benefit of order) subject to the condition that once such works become apparatus, any authorised works yet to be executed and not falling within this sub-paragraph are to be subject to the full terms of this Part of this Schedule.
- (4) The statutory undertaker must give the undertaker reasonable notice of any third party claim or demand and no settlement or compromise must be made, unless payment is required in connection

with a statutory compensation scheme, without first consulting the undertaker and considering its representations.

Ground subsidence monitoring scheme in respect of Undertaker's apparatus

33.—(1) No works within the distances set out in the statutory undertaker's specification for "Safe Working in the Vicinity of National Grid High Pressure Gas Pipelines and Associated Installations – Requirements for Third Parties" (SSW22) which are capable of interfering with or risking damage to the statutory undertaker's apparatus or alternative apparatus are to 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 statutory undertaker, such approval not to be unreasonably withheld or delayed.

(2) The monitoring scheme must 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, requires the undertaker to submit for the statutory undertaker's approval a ground subsidence mitigation scheme in respect of such subsidence in accordance with sub-paragraph (3).

(3) The monitoring scheme required by sub-paragraphs (1) and (2) must be submitted not less than 56 days before the commencement of any authorised works which sub-paragraph (1) applies. Any requirements of the statutory undertaker must be notified within 28 days of receipt of the monitoring scheme. The monitoring scheme must be implemented as approved, unless otherwise agreed in writing with the statutory undertaker.

(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") must be submitted to the statutory undertaker for approval, such approval not to be unreasonably withheld or delayed; and any mitigation scheme must be implemented as approved, unless otherwise agreed in writing with the statutory undertaker except that the statutory undertaker retains the right to carry out any further necessary protective works for the safeguarding of its apparatus and may recover any such costs in accordance with paragraph 31.

Co-operation

34.—(1) Where in consequence of the proposed construction of any of the authorised development, the undertaker or the statutory undertaker requires the removal of apparatus under paragraph 28(2) or the statutory undertaker makes requirements for the protection or alteration of apparatus under paragraph 29, the undertaker must use its reasonable endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the statutory undertaker's undertaking and the statutory undertaker must use its reasonable endeavours to co-operate with the undertaker for that purpose.

(2) Whenever the statutory undertaker's consent, agreement or approval is required in relation to plans, documents or other information submitted by the undertaker or the taking of action by the undertaker, it must not be unreasonably withheld or delayed.

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Access

35. If in consequence of any agreement reached in accordance with paragraph 27(1) or the powers granted under this Order the access to any apparatus is materially obstructed, the undertaker must provide such alternative means of access to such apparatus as will enable the statutory undertaker to maintain or use the apparatus no less effectively than was possible before such obstruction.

Arbitration

36. Except for differences or disputes arising under paragraph 28(2), 28(4), 29(1) and 30 any difference or dispute arising between the undertaker and the statutory undertaker under this Part of this Schedule must, unless otherwise agreed in writing between the undertaker and the statutory undertaker, be determined by arbitration in accordance with article 46 (arbitration).

Approval process

37.—(1) Within 42 days (or such longer period as the parties may agree) following receipt of any plans submitted to the statutory undertaker under paragraphs 28 or 30 the statutory undertaker must respond to the undertaker either—

- (a) confirming that it has no objection to the plans; or
- (b) specifying its objections to the plans and (at the statutory undertaker's discretion) suggesting any changes which in its opinion are needed in order to remove the objections or specifying further information which it requires in order to assess the plans.

(2) If the statutory undertaker fails to respond to the undertaker within 42 days (or such longer period as the parties may have agreed or agree) and provided that there has been compliance with sub-paragraph (4) the statutory undertaker is deemed to have confirmed that it has no objection to the said plans.

(3) When submitting the plans to the statutory undertaker for the purposes of paragraph 28 or 30 the undertaker must send the plans to the statutory undertaker (in hard copy only) by recorded post to National Grid Plant Protection, Brick Kiln Street, Hinckley, Leicestershire, LE10 0NA and the registered office of the statutory undertaker (or such other address as the statutory undertaker may notify the undertaker in writing from time to time) and clearly bearing the name of the project, contact details for responses and citing the relevant periods for response specified in this Part of this Schedule. In the event that the undertaker has not received a response from the statutory undertaker in accordance with the requirements of this Part of this Schedule within 21 days of submission of the plans, the undertaker must issue a written reminder to the statutory undertaker by recorded post to the addresses specified above and must otherwise use reasonable endeavours to make contact with the statutory undertaker to solicit a response to the draft plans.

Approval of requirements

38.—(1) The undertaker must—

- (a) not without the prior approval of the statutory undertaker (such approval not to be unreasonably withheld or delayed) submit or permit the submission of any plans, details, schemes, reports, arrangements, measures or programmes to the relevant planning authority under any requirement in Schedule 2 (requirements) that relate in whole or in part to any matter that affects or may affect the statutory undertaker's apparatus including any alternative apparatus or in respect of any protective works required in connection with the statutory undertaker's apparatus under this Part of this Schedule;

- (b) provide the statutory undertaker with copies of such plans, details, schemes, reports, arrangements, measures or programmes prior to submission to the relevant planning authority and take into account and incorporate any reasonable comments of the statutory undertaker; and
- (c) keep the statutory undertaker informed of the details of all material discussions and negotiations with the relevant planning authority relating to such plans, details, schemes, reports, arrangements, measures or programmes and give the statutory undertaker reasonable prior written notice of any meetings with the relevant planning authority relating to such matters and not object to the statutory undertaker and its consultants attending those meetings.

PART 3

FOR THE PROTECTION OF ANGLIAN WATER

39. The following provisions of this Part of this Schedule have effect, unless otherwise agreed in writing between the undertaker and Anglian Water.

40. In this Part of this Schedule –

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

“apparatus” means any works, mains, pipes or other apparatus belonging to or maintained by Anglian Water for the purposes of water supply and sewerage and—

- (a) any drain or works vested in Anglian Water under the Water Industry Act 1991⁽⁴⁾; and
- (b) 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⁽⁵⁾,

and includes a sludge main, disposal main or sewer outfall and any manholes, ventilating shafts, pumps or other accessories forming part of any sewer, drain or works (within the meaning of section 219 of that Act) 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; and

“plan” includes sections, drawings, specifications and method statements.

41. The undertaker must not interfere with, build over or near to any apparatus within the Order land or 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 the standard protection strips, which are the strips of land falling the following distances to either side of the medial line of any relevant pipe or apparatus: 2.25 metres where the diameter of the pipe is less than 150 millimetres; 3 metres where the diameter of the pipe is between 150 and 450 millimetres; 4.5 metres where the diameter of the pipe is between 450 and 750 millimetres; and 6 metres where the diameter of the pipe exceeds 750 millimetres, unless otherwise agreed in writing with Anglian Water, such agreement not to be unreasonably withheld or delayed, and such provision being brought to the attention of any agent or contractor responsible for carrying out the authorised development on behalf of the undertaker.

⁽⁴⁾ 1991 c. 56.

⁽⁵⁾ Section 102(4) was amended by section 96(1)(c) of the Water Act 2003. Section 104 was amended by sections 96(4) and 101(2) of, and part 3 of Schedule 9 to, the Water Act 2003 and section 42(3) of the Flood and Water Management Act 2010 (c. 29).

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42. The alteration, extension, removal or re-location of any apparatus must not be implemented until—

- (a) any requirement for any permits under the Environmental Permitting Regulations 2010⁽⁶⁾ or other legislation and any other associated consents are obtained, and any approval or agreement required from Anglian Water on alternative outfall locations as a result of such re-location are approved, such approval or agreement from Anglian Water not to be unreasonably withheld or delayed; and
- (b) the undertaker has made the appropriate application required under the Water Industry Act 1991 together with a plan and section of the works proposed and Anglian Water has agreed all of the contractual documentation required under that Act, such agreement not to be unreasonably withheld or delayed; and such works to be executed only in accordance with the plan, section and description submitted and in accordance with such reasonable requirements as may be made by Anglian Water for the alteration or otherwise for the protection of the apparatus, or for securing access to it.

43. In the situation where, in exercise of the powers conferred by this Order, the undertaker acquires any interest in any land in which apparatus is placed and such apparatus is to be relocated, extended, removed or altered in any way, no alteration or extension may take place until Anglian Water has established to its reasonable satisfaction in a timely manner, contingency arrangements in order to conduct its functions for the duration of the works to relocate, extend, remove or alter the apparatus or provide alternative apparatus.

44. Regardless of any provision in this Order or anything shown on any plan, the undertaker must not acquire any apparatus otherwise than by agreement, and before extinguishing any existing rights for Anglian Water to use, keep, inspect, renew and maintain its apparatus in the Order land, the undertaker must, with the agreement of Anglian Water, create a new right to use, keep, inspect, renew and maintain the alternative apparatus that is reasonably convenient for Anglian Water such agreement not to be unreasonably withheld or delayed, and to be subject to arbitration under article 46 (arbitration).

45. If the undertaker is unable to create the new rights referred to in paragraph 44, Anglian Water must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible, use its best endeavours to obtain the necessary rights.

46. If in consequence of the exercise of the powers conferred by this Order the access to any apparatus is materially obstructed the undertaker must provide such alternative means of access to such apparatus as will enable Anglian Water to maintain or use the apparatus no less effectively than was possible before such obstruction.

47. If in consequence of the exercise of the powers conferred by this Order, previously unmapped sewers, lateral drains or other apparatus are identified by the undertaker, notification of the location of such assets must immediately be given to Anglian Water and afforded the same protection as other Anglian Water assets.

48. If for any reason or in consequence of the construction of any of the works referred to in paragraphs 41, 42 and 43 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 Anglian Water, or there is any interruption in any service provided, or in the supply of any goods, by Anglian Water, the undertaker must—

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

(6) [S.I. 2010/675](#).

by reason or in consequence of any such damage or interruption.

49.—(1) Nothing in paragraph 48 imposes any liability on the undertaker in respect of any damage or interruption to the extent that it is attributable to the neglect or default of Anglian Water, its officers, servants, contractors or agents.

(2) Anglian Water must give the undertaker reasonable notice of any claim or demand under paragraph 48 and must consider its representations before proceeding further in respect of the claim or demand.

50. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and Anglian Water are regulated by the provisions of Part 3 of the 1991 Act.

PART 4

FOR THE PROTECTION OF ELECTRICITY SUPPLIERS

51. The following provisions of this Part of this Schedule have effect unless otherwise agreed in writing between the undertaker and the electricity supplier.

52. In this Part of this Schedule—

“alternative apparatus” means alternative apparatus adequate to enable the electricity supplier 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(7)), belonging to or maintained by the electricity supplier;

“electricity supplier” means any licence holder within the meaning of Part 1 of the Electricity Act 1989 for the area of the 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; and

“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.

On street apparatus

53. This Part of this Schedule does not apply to apparatus in respect of which the relations between the undertaker and the electricity supplier are regulated by the provisions of Part 3 of the 1991 Act.

Apparatus in temporarily stopped up streets

54. Regardless of the temporary stopping up or diversion of any highway under the powers conferred by article 14 (temporary prohibition or restriction of use of streets), an electricity supplier is to be at liberty at all times to take all necessary access across any such stopped up highway and 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.

(7) 1989 c. 29. The definition of “electrical plant” (in section 64) was amended by paragraphs 24 and 38(1) and (3) of Schedule 6 to the Utilities Act 2000 (c. 27).

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Protective works to buildings

55. The undertaker, in the case of the powers conferred by article 18 (protective work to buildings), must exercise those powers so as not to obstruct or render less convenient the access to any apparatus.

Acquisition of land

56. 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, such agreement not to be unreasonably withheld or delayed.

Removal of apparatus

57.—(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 or requires that the electricity supplier's apparatus is relocated or diverted, that apparatus must not be removed under this Part of this Schedule and any right of the electricity supplier to maintain that apparatus in that land is not extinguished until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of the electricity supplier in accordance with sub-paragraphs (2) to (7).

(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 requires the removal of any apparatus placed in that land, it must give to the electricity supplier 28 days' 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 the electricity supplier reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to the electricity supplier the necessary facilities and rights for the construction of alternative apparatus in other land of the undertaker and 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 electricity supplier must, on receipt of a written notice to that effect from the undertaker, as soon as reasonably possible use its best 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 of this Schedule must be constructed in such manner and in such line or situation as may be agreed between the electricity supplier and the undertaker or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(5) The electricity supplier must, after the alternative apparatus to be provided or constructed has been agreed or settled by arbitration in accordance with article 46, and after the grant to the electricity supplier 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.

(6) Regardless of anything in sub-paragraph (5), if the undertaker gives notice in writing to the electricity supplier 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 the undertaker, that work, instead of being executed by the electricity supplier, must be executed by the undertaker without unnecessary delay under the superintendence, if given, and to the reasonable satisfaction of the electricity supplier.

(7) Nothing in sub-paragraph (6) 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 the apparatus.

Facilities and rights for alternative apparatus

58.—(1) Where, in accordance with the provisions of this Part of this Schedule, the undertaker affords to the electricity supplier 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 are to be granted upon such terms and conditions as may be agreed between the undertaker and the electricity supplier or in default of agreement settled by arbitration in accordance with article 46 (arbitration).

(2) 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 the electricity supplier 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 the electricity supplier as appears to the arbitrator to be reasonable having regard to all the circumstances of the particular case.

Retained apparatus

59.—(1) Not less than 28 days before starting the execution of any works in, on or under any land purchased, 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 57(2), the undertaker must submit to the electricity supplier a plan of the works to be executed.

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

(3) Any requirements made by the electricity supplier under sub-paragraph (2) must be made within a period of 21 days beginning with the date on which a plan under sub-paragraph (1) was submitted to it.

(4) If the electricity supplier in accordance with sub-paragraph (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 51 to 53 and 56 to 58 apply as if the removal of the apparatus had been required by the undertaker under paragraph 57(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 instead of the plan previously submitted, and having done so the provisions of this paragraph apply to and in respect of the new plan.

(6) The undertaker is not to be required to comply with sub-paragraph (1) in a case of emergency but in that case it must give to the electricity supplier notice as soon as is reasonably practicable and a plan 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) In relation to works which will or may be situated on, over, under or within 10 metres measured in any direction of any apparatus, or involve embankment works within 10 metres of

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any apparatus, the plan to be submitted to the electricity supplier under sub-paragraph (1) must be detailed including a method 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;
- (d) the position of all electricity apparatus; and
- (e) by way of detailed drawings, every alteration proposed to be made to such apparatus.

Expenses and costs

60.—(1) Subject to the following provisions of this paragraph, the undertaker must repay to the electricity supplier all expenses reasonably incurred by the electricity supplier in, or in connection with, the inspection, removal, 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 paragraph 57(2).

(2) The value of any apparatus removed under the provisions of this Schedule 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; 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 46 (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 electricity supplier by virtue of sub-paragraph (1) is to be reduced by the amount of that excess.

(4) For the purposes of sub-paragraph (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 pipe or 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 an electricity supplier 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 the electricity supplier 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.

61.—(1) Subject to sub-paragraphs (2) and (3), if by reason or in consequence of the construction of the authorised development, 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 the electricity supplier, or there is any interruption in any service provided, or in the supply of any goods, by the electricity supplier, the undertaker is to—

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

by reason or in consequence of any such damage or interruption.

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

(3) 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 the electricity supplier, its officers, servants, contractors or agents.

(4) An electricity supplier 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 and, if it withholds such consent, it is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

Cooperation

62. Where in consequence of the proposed construction of any of the authorised development, the undertaker or the electricity supplier requires the removal of apparatus under paragraph 57(2) or the electricity supplier makes requirements for the protection or alteration of apparatus under paragraph 59, the undertaker must use its best endeavours to co-ordinate the execution of the works in the interests of safety and the efficient and economic execution of the authorised development and taking into account the need to ensure the safe and efficient operation of the electricity supplier's undertaking and the electricity supplier must use its best endeavours to co-operate with the undertaker for that purpose.

PART 5

FOR THE PROTECTION OF OPERATORS OF ELECTRONIC COMMUNICATIONS CODE NETWORKS

63. The following provisions have effect for the protection of any operator, unless otherwise agreed in writing between the undertaker and the operator.

64. In this Part of this Schedule—

“the 2003 Act” means the Communications Act 2003⁽⁸⁾;

“conduit system” has the same meaning as in the electronic communications code and references to providing a conduit system is to be construed in accordance with paragraph 1(3A)⁽⁹⁾ of that code;

“electronic communications apparatus” has the same meaning as in the electronic communications code;

⁽⁸⁾ 2003 c. 21.

⁽⁹⁾ Paragraph 1(3A) was inserted by section 106(2) of, and paragraphs 1 and 4 of Schedule 3 to, the Communications Act 2003.

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“the electronic communications code” has the same meaning as in Chapter 1 of Part 2 of the 2003 Act⁽¹⁰⁾;

“electronic communications code network” means—

- (a) so much of an electronic communications network or conduit system provided by an electronic communications code operator as is not excluded from the application of the electronic communications code by a direction under section 106 of the 2003 Act; and
- (b) an electronic communications network which the Secretary of State is providing or proposing to provide;

“electronic communications code operator” means a person in whose case the electronic communications code is applied by a direction under section 106 of the 2003 Act; and

“operator” means the operator of an electronic communications code network.

65. The exercise of the powers conferred by article 32 (statutory undertakers) is subject to paragraph 23 of Schedule 2 to the Telecommunication Act 1984⁽¹¹⁾ (undertaker’s works).

66.—(1) Subject to sub-paragraphs (2) to (4), if as the result of the authorised development or its construction, or of any subsidence resulting from any part of the authorised development—

- (a) any damage is caused to any electronic communications apparatus belonging to an operator (other than apparatus the repair of which is not reasonably necessary in view of its intended removal for the purposes of the authorised development, or other property of an operator); or
- (b) there is any interruption in the supply of the service provided by an operator,

the undertaker must bear and pay the cost reasonably incurred by the operator in making good such damage or restoring the supply and make reasonable compensation to that operator for any other expenses, loss, damages, penalty or costs incurred by it, by reason, or in consequence of, any such damage or interruption.

(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 an operator, its officers, servants, contractors or agents.

(3) The operator must give the undertaker reasonable notice of any such claim or demand and no settlement or compromise of the claim or demand may be made without the consent of the undertaker which, if it withholds such consent, is to have the sole conduct of any settlement or compromise or of any proceedings necessary to resist the claim or demand.

(4) Any difference arising between the undertaker and the operator under this Part of this Schedule is to be referred to and settled by arbitration under article 46 (arbitration).

67. This Part of this Schedule does not apply to—

- (a) any apparatus in respect of which the relations between the undertaker and an operator are regulated by the provisions of Part 3 of the 1991 Act; or
- (b) any damages, or any interruptions, caused by electro-magnetic interference arising from the construction or use of the authorised development.

⁽¹⁰⁾ See section 106.

⁽¹¹⁾ 1984 c. 12. Paragraph 23 was amended by section 190 of, and paragraph 68 of Schedule 25 and part 1 of Schedule 27 to, the Water Act 1989 (c. 15), section 112(4) of, and Schedule 18 to, the Electricity Act 1989 (c. 29) and section 106(2) of, and paragraphs 1, 5(d) and 8 of Schedule 3 to, the Communications Act 2003.