

## SCHEDULE 4

### PROTECTIVE PROVISIONS

#### PART 3

#### PROTECTION OF NATIONAL GRID ELECTRICITY TRANSMISSION PLC

##### **Part to have effect unless otherwise agreed**

1. The provisions of this Part have effect unless otherwise agreed in writing between the undertaker and National Grid.

##### **Interpretation**

2. In this Part—

“acceptable insurance” means third party liability insurance effected and maintained by the undertaker with a limit of indemnity of not less than £10 millions per occurrence or series of occurrences arising out of a single event arranged with underwriters whose security or credit rating is not lower than—

- (a) A-, if the rating is assigned by Standard & Poor’s Ratings Group; or
- (b) A3, if the rating is assigned by Moody’s Investors Services Inc.;

“alternative apparatus” means appropriate alternative apparatus to the satisfaction of National Grid to enable it 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 National Grid;

“authorised development” includes the use and maintenance of the authorised development;

“commence” and “commencement” have the meaning given in paragraph 1 of Schedule 2 (Requirements);

“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 on land;

“maintain” and “maintenance”, in relation to any apparatus or alternative apparatus of National Grid, include the ability and right to construct, use, repair, alter, inspect, renew and remove;

“National Grid” means National Grid Electricity Transmission plc<sup>(1)</sup> (company number 2366977);

“plans” includes 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;

“specified work” means so much the authorised development that will or may be situated within 15 metres (measured in any direction) of, or that may affect, any apparatus.

##### **Application**

3. This Part does not apply to apparatus in respect of which the relations between the undertaker and National Grid are regulated by Part 3 of the 1991 Act.

---

(1) The registered office of National Grid Electricity Transmission plc is 1-3 Strand, London WC2N 5EH.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

### **Acquisition of land**

4.—(1) Despite any provision of this Order or anything shown on the land plans or contained in the book of reference, the undertaker must not acquire any land, interest or apparatus or override any easement or other interest of National Grid otherwise than by agreement (such agreement not to be unreasonably withheld).

(2) Where there is any inconsistency or duplication between the provisions of this Part relating to the relocation or removal of apparatus (including the payment of costs and expenses relating to such relocation or removal) and the provisions of any existing easement, right, agreement or licence granted, used, enjoyed or exercised by National Grid as of right or other use in relation to the apparatus, the provisions of this Part prevail.

### **Removal of apparatus**

5.—(1) If, in accordance with the agreement reached under paragraph 4 or in any other authorised manner, the undertaker acquires an interest in any land in which any apparatus is placed—

(a) the apparatus must not be removed under this Part; and

(b) any right of National Grid to maintain the apparatus in the land must not be extinguished, until alternative apparatus has been constructed and is in operation to the reasonable satisfaction of National Grid 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 the land, it must give to National Grid at least 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 power conferred by this Order, National Grid reasonably needs to remove any of its apparatus) the undertaker must, subject to sub-paragraph (3), afford to National Grid to its satisfaction (taking into account paragraph 6(1)) 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, National Grid must, on receipt of a written notice to that effect from the undertaker, take such steps as are reasonable in the circumstances to endeavour to obtain the necessary facilities and rights in the land in which the alternative apparatus is to be constructed, except that the obligation in this sub-paragraph does not require National Grid to use its compulsory purchase powers for this purpose unless it elects to do so.

(4) Any alternative apparatus to be constructed in land of the undertaker under this Part must be constructed in such manner and in such line or situation as may be agreed between National Grid and the undertaker.

(5) National Grid must, after the alternative apparatus to be provided or constructed has been agreed, and subject to the grant to National Grid 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 this Part.

## **Facilities and rights for alternative apparatus**

6.—(1) Where in accordance with this Part the undertaker affords to National Grid 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 must be granted on such terms and conditions as may be agreed between the undertaker and National Grid and must be no less favourable on the whole to National Grid than the facilities and rights enjoyed by it in respect of the apparatus to be removed, unless agreed by National Grid.

(2) If the facilities and rights to be afforded by the 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 National Grid 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—

- (a) the matter must be referred to arbitration (in accordance with article 25 (arbitration)); and
- (b) the arbitrator must make such provision for the payment of compensation by the undertaker to National Grid as appears to the arbitrator to be reasonable, having regard to all the circumstances of the particular case.

## **Retained apparatus: protection of National Grid**

7.—(1) Not less than 56 days before the commencement of any specified work that does not require the removal of apparatus under paragraph 5(2), the undertaker must submit a plan to National Grid and seek from National Grid details of the apparatus belonging to or maintained by National Grid.

(2) The plan to be submitted under sub-paragraph (1) must show—

- (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 and 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 apparatus.

(3) In relation to any works that will or may be situated on, over, under or within 10 metres of any part of the foundations of an electricity tower or between any 2 or more electricity towers, the plan to be submitted under sub-paragraph (1) must be detailed, including (in addition to the matters set out in sub-paragraph (2))—

- (a) a method statement;
- (b) details of any cable trench design including route, dimensions and clearance to pylon foundations;
- (c) details of how pylon foundations will not be affected before, during and post-construction;
- (d) details of load-bearing capacities of trenches;
- (e) details of cable installation methodology including access arrangements, jointing bays and backfill methodology;
- (f) a written management plan for high voltage hazard during construction and ongoing maintenance of the cable route;
- (g) written details of the operations and maintenance regime for the cable, including frequency and method of access;

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (h) assessment of earth rise potential, if reasonably required by National Grid’s engineers;
  - (i) evidence that trench-bearing capacity will be designed to 26 tonnes to take the weight of overhead line construction traffic.
- (4) The undertaker must not commence any works to which sub-paragraph (1) or (3) applies until National Grid has given written approval of the plan so submitted.
- (5) Any approval of National Grid required under sub-paragraph (1)—
- (a) may be given subject to reasonable conditions for any purpose mentioned in sub-paragraph (6) or (8); and
  - (b) must not be unreasonably withheld.
- (6) In relation to any works to which sub-paragraph (1) or (3) applies, National Grid may require such modifications to be made to the plan 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.
- (7) Works executed under sub-paragraph (1) or (3) must be executed only in accordance with the plan submitted, as amended from time to time by agreement between the undertaker and National Grid and in accordance with such reasonable conditions, modifications and requirements as may be made in accordance with sub-paragraph (5), (6), (8) or (9) by National Grid for the alteration or otherwise for the protection of the apparatus, or for securing access to it; and National Grid is entitled to watch and inspect the execution of the works.
- (8) Where National Grid require any protective works to be carried out either by itself or by the undertaker (whether of a temporary or permanent nature)—
- (a) the protective works must be carried out to the undertaker’s satisfaction before the commencement of any authorised development (or any relevant part of it); and
  - (b) National Grid must give at least 56 days’ notice of the protective works from the date of submission of a plan in accordance with sub-paragraph (1) (except in an emergency).
- (9) If National Grid, in accordance with sub-paragraph (6) or (8) 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 5 and 6 apply as if the removal of the apparatus had been required by the undertaker under paragraph 5(2).
- (10) Nothing in this paragraph prevents 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 any works, a new plan, instead of the plan previously submitted, and this having been done, the provisions of this paragraph apply to and in respect of the new plan.
- (11) 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(2); but in that case the undertaker must—
- (a) give to National Grid notice as soon as is reasonably practicable and a plan of the works;
  - (b) comply with sub-paragraphs (6), (7) and (8) insofar as is reasonably practicable in the circumstances; and
  - (c) comply with sub-paragraph (12).
- (12) The undertaker must at all times when carrying out any works authorised by this Order comply with—
- (a) National Grid’s policy Development near overhead lines(3);

---

(2) “Emergency works” is defined in section 52(1).

(3) The document is available at this link: <http://www.nationalgrid.com/NR/rdonlyres/4DD2D3FF-B973-4F3C-A8C3-CDB640526660/45082/Developmentnearoverheadlines.pdf>.

- (b) the Energy Networks Association's Technical Specification 43-8 Overhead Line Clearances(4); and
- (c) the Health and Safety Executive's guidance note GS6 Avoiding Danger from Overhead Power Lines(5).

## Expenses

8.—(1) Subject to the following provisions of this paragraph, the undertaker must pay to National Grid on demand all charges, costs and expenses reasonably anticipated or incurred by National Grid in, or in connection with, the inspection, removal, relaying or replacing, alteration or protection of any apparatus, or the construction of any new apparatus, that may be required in consequence of the execution of any works referred to in this Part, including without limitation any costs reasonably incurred or compensation properly paid in connection with—

- (a) the acquisition of rights or the exercise of statutory powers for such apparatus, including without limitation, in the event that National Grid elects to use compulsory purchase powers to acquire any necessary rights under paragraph 5(3), all costs incurred as a result of such action;
- (b) 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 works referred to in this Part.

(2) There must be deducted from any sum payable under sub-paragraph (1) the value of any apparatus removed under this Part that is not re-used as part of the alternative apparatus, that value being calculated after removal.

(3) If in accordance with this Part—

- (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 25 to be necessary, then, if such placing involves cost in the construction of works under this Part 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 that apart from this sub-paragraph would be payable to National Grid by virtue of sub-paragraph (1) must be reduced by the amount of that excess except 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 the full cost must be borne by the undertaker.

---

(4) The document is available at this link: [http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/TR040005/2.%20Post-Submission/Section%20127%20Application/130402\\_TR040005\\_WPD\\_Addendum\\_Appendix\\_9.pdf](http://infrastructure.planningportal.gov.uk/wp-content/ipc/uploads/projects/TR040005/2.%20Post-Submission/Section%20127%20Application/130402_TR040005_WPD_Addendum_Appendix_9.pdf).

(5) The guidance note is available at this link: <http://www.hse.gov.uk/pubns/g6.htm>.

*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

- (4) For the purposes of sub-paragraph (3)—
- (a) an extension of apparatus to a length greater than the length of existing apparatus must not be treated as a placing of apparatus of greater dimensions than those of the existing apparatus; and
  - (b) where the provision of a joint in a pipe or cable is agreed, or is determined to be necessary, the consequential provision of a jointing chamber or of a manhole must be treated as if it also had been agreed or had been so determined.

(5) An amount that apart from this sub-paragraph would be payable to National Grid 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 National Grid any financial benefit by deferment of the time for renewal of the apparatus in the ordinary course, be reduced by the amount that represents that benefit.

### **Indemnity**

- 9.—(1) Subject to sub-paragraphs (2) and (3), if, by reason or in consequence of—
- (a) the construction of any works authorised by this Part;
  - (b) the construction, use, maintenance or failure of any of the authorised development by or on behalf of the undertaker; or
  - (c) 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 or any subsidence resulting from any of those works),

any material 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 National Grid, or there is any interruption in any service provided, or in the supply of any goods, by National Grid, or National Grid becomes liable to pay any amount to any third party, the undertaker must—

- (d) bear and pay on demand the cost reasonably incurred by National Grid in making good such damage or restoring the supply; and
- (e) indemnify National Grid for any other expenses, loss, demands, proceedings, damages, claims, penalties or costs incurred by or recovered from National Grid,

by reason or in consequence of any such damage or interruption or National Grid becoming liable to any third party as mentioned.

(2) The fact that any act or thing may have been done by National Grid on behalf of the undertaker or in accordance with a plan approved by National Grid or in accordance with any requirement of National Grid as a consequence of the authorised development or under its supervision does not excuse the undertaker from liability under sub-paragraph (1) unless National Grid fails to carry out and execute the works properly with due care and attention and in a skilful and workman like manner or in a manner that accords materially with the approved plan or as otherwise agreed between the undertaker and National Grid.

(3) Nothing in sub-paragraph (1) 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 National Grid, its officers, servants, contractors or agents.

(4) National Grid must give the undertaker reasonable notice of any claim or demand, and no settlement or compromise may be made without first consulting the undertaker and considering its representations.

## **Insurance**

**10.**—(1) The undertaker must not—

- (a) commence, or permit the commencement of, construction of the authorised development on any land owned by National Grid or in respect of which National Grid has an easement, a wayleave for apparatus or any other interest; or
- (b) carry out any specified work,

unless National Grid—

- (c) is satisfied acting reasonably (but subject to all necessary regulatory constraints) that the undertaker has effected acceptable insurance and provided evidence to National Grid that it will maintain acceptable insurance during the construction of the authorised development; and
- (d) has confirmed its satisfaction in writing to the undertaker (such confirmation not to be unreasonably withheld or delayed).

(2) If the undertaker fails to comply with sub-paragraph (1), National Grid may seek injunctive relief (or any other equitable remedy) in a court of competent jurisdiction, and the undertaker irrevocably and unconditionally waives any right of objection in relation to National Grid's right to seek such relief or remedy.

(3) The undertaker must maintain acceptable insurance during the construction of the authorised development.

## **Enactments and agreements**

**11.** Nothing in this Part affects the provisions of any enactment or agreement regulating the relations between the undertaker and National Grid in respect of any apparatus laid or erected in land belonging to the undertaker on the date on which this Order is made.

## **Co-operation**

**12.** National Grid and the undertaker must each use their best endeavours to co-operate with the other party on the timing and method of execution of any works carried out under this Order in the interests of safety and the efficient and economic execution of the authorised development, taking into account the need to ensure the safe and efficient operation of the other party's operations.

## **Access**

**13.** If, in consequence of any agreement reached in accordance with paragraph 4(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 the apparatus as will enable National Grid to maintain or use the apparatus no less effectively than was possible before the obstruction.

## **Arbitration**

**14.** Any difference or dispute arising between the undertaker and National Grid under this Part must, unless otherwise agreed in writing between the undertaker and National Grid, be determined by arbitration in accordance with article 25.